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UNITED STATES INTERNATIONAL TRADE COMMISSION

GOLF GLOVES

**Report on Investigation No. 337-37 Conducted Under the Provisions of
Section 337 of Title III of the Tariff Act of 1930, as Amended**

**ITC Publication 720
Washington, D. C.
March 1975**

UNITED STATES INTERNATIONAL TRADE COMMISSION

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to as the Antonious patent, and is also the owner of that patent. Ajac, whose president and principal stockholder is Antonious, is a distributor of golf gloves made in accordance with the Antonious patent.

The complaint is based upon the Antonious patent. 1/ In the complaint it is alleged that the Spalding Division of the Questor Corp., Chicopee, Mass.; Leonard Cecil (Cecil International Co.), Bethesda, Md.; O.F. Mossberg & Sons, Inc., North Haven, Conn.; and other unnamed parties 2/ import and sell golf gloves made in accordance with the Antonious patent without authorization from complainants. These gloves are alleged in the complaint to be manufactured in various foreign jurisdictions, including Spain, England, Republic of Korea, Portugal, Hong Kong, and Japan. 3/ It is further alleged in the complaint that the above importation and sale of gloves substantially injures the efficiently and economically operated domestic golf glove industry operating under the Antonious patent. A request for the institution of a full investigation, along with a request for a recommendation for a temporary and a permanent exclusion order, is made in the complaint.

1/ The patent is reproduced in hearing exhibit (hereinafter "exhibit") 1, attachment A thereof, and in appendix A of this report.

2/ By submission received by the Commission on May 16, 1973 (exhibit 4), complainants further named the following as importers and sellers of allegedly infringing gloves: Lordon Co., Yonkers, N.Y.; Mario Herrero, S.L., New York, N.Y.; Charles A. Eaton Co., Brockton, Mass.; Clover Co., Inc., Brooklyn, N.Y.

3/ The allegation concerning the source of the imported gloves is unsupported in the complaint. From the inspection of the imports available to the Commission, only Spain and Republic of Korea can be identified as sources of the allegedly infringing imports, and the public hearing held in investigation No. 337-37 resulted in no information contrary to that derived from inspection. (See transcript of the hearing (hereinafter "transcript"), pp.185-194.)

On January 18, 1973, the Commission instituted preliminary inquiry No. 337-L-56 with regard to the allegations made in the complaint to determine whether a full investigation was warranted, and, if so, whether to recommend to the President that a temporary exclusion order be issued against the subject imported golf gloves pursuant to section 337(f) of the Tariff Act of 1930, as amended. 1/ On January 22, 1973, the Commission issued a notice of complaint received, and interested persons were given until February 20, 1973, to submit pertinent information regarding the inquiry (38 F. R. 2502, Jan. 26, 1973). As a result of the request of all known parties to the inquiry, the Commission, on February 15, 1973, extended the time for responses to April 6, 1973 (38 F. R. 4738, Feb. 21, 1973). Copies of the complaint, notice of complaint received, and notice of the extension of time were served by mail on all respondents named by complainant as allegedly engaging in unfair methods or acts.

Upon conclusion of its preliminary inquiry, the Commission, on May 21, 1974, ordered a full investigation and scheduled a hearing on the matter for July 1, 1974. Due notice of the investigation and hearing was given in the Federal Register of May 29, 1974 (39 F.R. 18724), and copies of the notice of investigation and hearing were served by mail on complainants and all respondents named by complainants (copies

1/ 19 U.S.C. 1337(f). Sec. 337(f) reads as follows:

(f) Entry Under Bond.--Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury.

of the complaint were previously served by mail). The Commission did not recommend at the conclusion of its preliminary inquiry that the President issue a temporary exclusion order pursuant to section 337(f) of the Tariff Act of 1930, as amended.

The scheduled public hearing was held July 1, 2, and 17, 1974. Appearances of record were made by the complainants, Anthony J. Antonious and Ajac Glove Corp., and respondent Spalding Division of Questor Corp. The hearing was recessed until August 23, 1974, at the conclusion of the testimony on July 17, 1974.

Notice of resumption of the hearing was given in the Federal Register on July 30, 1974 (39 F.R. 27614), and such notice was served by mail on complainants and all respondents named by the complainants. The hearing was resumed on August 23, 1974, for the purpose of receiving additional information to complete the record, and the hearing was adjourned the same day.

FINDING, CONCLUSION, AND RECOMMENDATION OF THE COMMISSION

The Commission does not find unfair methods of competition or unfair acts in the importation into the United States of certain golf gloves or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The Commission therefore concludes that there is no violation of section 337 of the Tariff Act of 1930 and recommends that the President not issue an exclusion order to forbid entry into the United States of such golf gloves.

FINDINGS OF FACT AND STATEMENT OF REASONS OF CHAIRMAN
BEDELL, VICE CHAIRMAN PARKER, 1/ AND COMMISSIONER MOORE

We agree with our colleagues that the statutory requirements for finding a violation of section 337 are not met in this case. On the basis of the record in this proceeding we find that claim 1 of U.S. Patent No. 3,588,917 is invalid for the purposes of section 337. Therefore, the unfair method of competition or unfair act in the importation into the United States or in the sale of the imported golf gloves required under section 337 has not been established.

We do not intend our findings to be construed as an indication that we believe it is necessary for the Commission to establish the validity of a patent (or claim therein) in each section 337 case investigated by the Commission.

In general we support the Court's decision in the Von Clemm case 2/ which held that the Commission should consider a patent valid in the absence of a finding of invalidity by a court of competent jurisdiction. However, in cases such as this, where there is clear and convincing evidence, uncontroverted by any party, with respect to the invalidity of a patent, we believe the Commission should consider such evidence in making its findings.

1/ Vice Chairman Parker concurs in the result and in the first paragraph of this statement.

2/ In re Von Clemm, 229 F. 2d 441, 43 C.C.P.A. 56 (1955).

FINDINGS OF FACT AND STATEMENT OF REASONS OF
COMMISSIONERS LEONARD AND ABLONDI

Section 337 of the Tariff Act of 1930, as amended, declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is (a) to destroy or substantially injure an efficiently and economically operated domestic industry, or (b) to prevent the establishment of such an industry, or (c) to restrain or monopolize trade and commerce in the United States. The U.S. International Trade Commission investigates alleged violations of this section, and reports its findings and recommendations to the President, who may then exclude from entry into the United States the articles which are the subject of the investigation if he finds that the statute is being violated.

The basic issue to be faced by the Commission in investigation No. 337-37 at this time is whether to recommend to the President the issuance of an exclusion order against the imported golf gloves which are the subject of this investigation. In making this determination the Commission would normally consider whether an unfair method of competition or unfair act is being practiced in the importation or sale of the subject golf gloves, and, if so, whether the effect or tendency of such unfair method of competition or unfair act is to substantially injure an efficiently and economically operated domestic

industry. 1/ For the Commission to recommend the issuance of an exclusion order, both an unfair method of competition or unfair act and the requisite injury must be found to exist by the Commission. In our opinion, however, in this investigation the only question that in fact need be considered by the Commission is whether an unfair method of competition or unfair act is being practiced in the importation or sale of the subject golf gloves, since our determination with respect to this question is dispositive of the basic issue before the Commission.

In the instant investigation, we find that the criteria of section 337 are not met because we do not find the existence of the requisite unfair method of competition or unfair act in the importation or sale of the subject golf gloves. The only unfair method of competition or unfair act alleged is the importation and sale, without complainant's authorization, of golf gloves which are covered by claim 1 2/ of U.S. Patent No. 3,588,917 (hereinafter referred to as patent '917), which is owned by complainant. The patent is described and the specific allegations of complainant are found at pages A9-A13 and A2-A5, respectively.

1/ The effect or tendency of unfair practices to prevent the establishment of such an industry or to restrain or monopolize trade and commerce in the United States is not in issue in this investigation.

2/ Claim 1 of U.S. Patent No. 3, 588,917 is the only claim in issue in this investigation. See p. A10.

The issue of the "validity" 1/ of claim 1 of patent '917 was raised during the course of the investigation, and on the basis of the evidence and submissions presented during the investigation with respect thereto, we have concluded that claim 1 of patent '917 is "invalid" for the purposes of section 337. Since the unfair method of competition or unfair act alleged in this investigation is infringement of claim 1 of patent '917, and since there can be no infringement of an invalid claim, we have therefore also concluded that no unfair method of competition or unfair act within the meaning of section 337 is being practiced.

Consideration of validity in section 337 investigations involving patents

In past investigations, the Commission has consistently held (and has been upheld upon court review) that the unauthorized importation of articles into the United States, or the sale of such articles, which are covered by one or more claims of a valid U.S. patent, is an unfair method of competition or unfair act within the meaning of section 337. 2/ In making a finding for the purposes of section 337 as to whether a product is covered by the claims of a valid U.S. patent, the Commission has always referred to the patent laws of the United States and considered

1/ The terms "validity" and "invalidity" are used in this statement for convenience only. The terms validity and invalidity are words of art which are used in the patent laws of the United States. (See 35 U.S.C. 282 (1970).) Any determination of ours in this statement with respect to the "validity" or "invalidity" of claim 1 of patent '917 does not constitute a trial of the validity of said claim or an ascertainment of validity or invalidity, such as is the case where such issue arises in one of the Federal district courts, but rather the ascertainment of a fact which is relevant to determining whether there exist unfair methods of competition or unfair acts. Our use of such terms is not, unless the context reveals otherwise, as words of art.

2/ For example, U.S. Tariff Commission, Convertible Game Tables and Parts Thereof: Report on Investigation No. 337-34 . . ., TC Publication 705, 1974, p. 15, and cases cited therein.

such laws in making the finding for the purposes of section 337. Thus, the Commission has given, and will in the future continue to give, effect to the requirement of 35 U.S.C. 282 that a patent shall be presumed valid and that the burden of establishing the invalidity of a patent (or claim therein) shall rest on the party asserting it. Indeed, in the past, the Commission has consistently followed the course of conclusively presuming a patent (or claim therein) in issue before it to be valid for the purposes of section 337, unless such patent (or claim therein) has been held invalid under the patent laws by a Federal court, believing itself bound to this course by court decisions. 1/

A primary issue which has arisen and upon which relevant evidence was obtained during the course of this investigation is whether claim 1 of patent '917 is valid. In our opinion, the Commission should reverse its policy of conclusively presuming a patent (or claim therein) in issue before it as valid unless held otherwise by a Federal court, and in the instant investigation should question the validity of claim 1 of patent '917 for the purpose of determining whether an unfair method of competition or unfair act is being practiced with respect to the importation or sale of the subject golf gloves.

While there have been several Court of Customs and Patent Appeals (C.C.P.A.) cases 2/ which have stated that the Tariff (International Trade) Commission should treat a duly issued patent as valid and not inquire

1/ For example, U.S. Tariff Commission, Ampicillin: Report to the President . . ., TC Publication 345, 1970, pp. 8 and 9.

2/ In re Frischer & Co., Inc., 39 F.2d 247, 17 C.C.P.A. 494 (1930); In re Orion Co., 71 F.2d 458, 22 C.C.P.A. 149 (1934); In re Northern Pigment Co., 71 F.2d 447, 22 C.C.P.A. 166 (1934); and In re Von Clemm, 229 F.2d 441, 43 C.C.P.A. 56 (1955).

into whether it was improvidently issued by the Patent Office, these cases, in our opinion, are not controlling in this investigation nor are they immutable. Since Commission precedent is based on these cases, Commission precedent should not control the Commission's decision in this investigation and is not immutable.

It appears that the basis for the holding in the C.C.P.A. cases is the Court's belief that Congress did not intend to confer jurisdiction upon the Commission to pass upon the validity of patents--matters which were "cases or controversies" to be determined by the Federal courts. 1/ The Commission, however, does not resolve issues under the patent laws, nor does it determine validity. In patent-based section 337 cases, it determines whether activities with respect to the patent in question constitute unfair methods of competition or unfair acts. It is noted that the patent laws are based upon article 1, section 8, clause 8 of the Constitution, 2/ while section 337 is based primarily, if not solely, on article 1, section 8, clause 3. 3/ Therefore, any finding of the Commission as to whether a patent is valid in a section 337 case, by reference to the principles of the patent laws, is for the purposes of section 337 alone. Such finding has no other effect, and does not constitute a finding of validity in a judicial "case or controversy" sense, nor withdraw a matter properly for the judicial branch from judicial cognizance, nor

1/ In re Orion Co., footnote 2 at p. 10, at 159.

2/ Clause 8 provides that Congress shall have power "To promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their inventive Writings and Discoveries."

3/ Clause 3 provides that Congress shall have power "To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes."

resolve issues under the patent laws. It is interesting to note that the very court which said that the issue of the validity of a patent was not a proper consideration for the Commission apparently determined that the Commission could consider the issue of whether a product was covered by the claim of a patent (infringement); 1/ the reason for treating a validity determination by the Commission differently than an infringement determination was not explained.

There would appear to be no basis in the legislative history of section 337, or in the statute itself, for the Court's decision that Congress does not intend for the Commission to consider the validity of a patent before it in determining whether an unfair method of competition or unfair act is being practiced. The legislative history of section 337 and the statute itself are silent with respect to the issue of how Congress intended for the Commission to regard the issue of validity. Indeed the best interpretation to be made from the silence of the statutory language and legislative history is that Congress intended for the Commission to consider the issue of validity in patent-based section 337 cases. There appears to be no question that Congress intended that patent infringement be considered an unfair method of competition or unfair act within the meaning of section 337. 2/ Under the patent laws there can be no infringement of a patent which is invalid, and this was clearly the rule at the time section 337 was enacted. If

1/ In re Orion Co., footnote 2 at p. 10, at 159 and 160.

2/ Ibid., and footnote 2 at p.9.

Congress intended for the Commission to consider patent infringement to be within the strictures of section 337, the implication, absent specific language to the contrary, is that every question bearing on the issue of infringement is also within the purview of Commission authority, including the validity of the patent for the purposes of section 337.

Moreover, to the extent that the C.C.P.A. cases which are the foundation of present Commission practice with respect to considering validity are based on judicial policy considerations, they are no longer controlling. These cases were decided in the 1930's, with the Von Clemm case, decided in 1955, merely citing the previous decisions. Since that time, the Federal policy, as enunciated by the Federal courts with regard to the questioning of the validity of a patent in particular circumstances, has undergone a significant change. As stated by the Supreme Court in the case of Lear v. Adkins, 395 U.S. 653 (1969), there is a "strong federal policy favoring free competition in ideas which do not merit patent protection," 1/ and "federal law requires that all ideas in general circulation be dedicated to the common good unless they are protected by a valid patent." 2/ The Court also stated that there is an "important public interest in permitting full and free competition in the use of ideas which are in reality a part of the public domain." 3/ The Court's opinion of the validity of a patent owing to its mere issuance is revealed in the following excerpt from the Lear decision:

1/ 395 U.S. 635, at 674.

2/ Ibid., at 668.

3/ Ibid., at 670.

A patent, in the last analysis, simply represents a legal conclusion reached by the Patent Office. Moreover, the legal conclusion is predicated on factors as to which reasonable men can differ widely. Yet the Patent Office is often obligated to reach its decision in an ex parte proceeding, without the aid of the arguments which could be advanced by parties interested in proving patent invalidity. 1/

In the Lear case, the Court determined that the prior policy of not permitting a licensee to challenge the validity of his licensor-patentee's patent should be changed to permit such a challenge.

Another recent case clearly showing a change in Federal policy in an area of law closely associated with patents, and a case very much analogous to the situation before the Commission in this investigation, is Knickerbocker Toy Co. v. Faultless Starch Co., 467 F. 2d 501 (1972). In that case, the issue before the C.C.P.A. was whether the Patent Office's Trademark Trial and Appeal Board had jurisdiction to determine copyright validity or infringement as a collateral matter to the question of damages within the meaning of the Trademark Act of 1946. In its decision, the court held that the Board may well have to pass on copyright validity in the case before it in exercise of its jurisdiction to determine damages. The rationale was essentially that the Patent Office could not grant registration of a

1/ 395 U.S. 653, at 670.

trademark or permit its retention if there had been a prior use of a similar representation and a likelihood of damage from confusion of such prior representation with the trademark in issue. The party contesting the registration of a trademark and claiming damages before the Board was entitled to introduce the prior use into evidence to establish prior use and damages, and, even though the Board had no jurisdiction to determine the validity of the copyright registration as such, it could pass on the validity of the copyright collaterally to determining damages, "if it [was] necessary to do so in the course of exercising its statutory jurisdiction." 1/

It seems that the above cases reveal a change in policy and attitude regarding the deference to be accorded a determination by the Patent Office that a party is entitled to intellectual property. The courts appear to be moving to a position of requiring a holder of intellectual property to defend his right to hold such property at any time that issue arises during the course of litigation in the Federal courts, or before an administrative agency where for the purposes of the agency's jurisdiction a determination of such right is necessary for the agency to exercise its jurisdiction fairly and properly. It is our opinion that a reversal of Commission practice with respect to the validity of a patent would be well founded in law.

1/ 467 F.2d 501, at 509.

There are several other factors which have a bearing on our recommendation that the Commission consider the validity of a patent in issue before it. The first of these is the recent passage of the Trade Act of 1974. 1/ In determining the meaning to be given to a statute, it has been held appropriate to refer to subsequent legislative enactment as an aid to interpretation. 2/ In the Trade Act of 1974, Congress made it clear that patent based cases were within the Commission's section 337 jurisdiction 3/, and that the Commission should consider "all legal and equitable defenses . . . in all cases." 4/ The report of the Committee on Finance, U.S. Senate, on what was to become the Trade Act of 1974, explained language which was the precursor of the language in the act in the following manner:

The Committee believes the Commission may (and should when presented) under existing law review the validity and enforceability of patents, but Commission precedent and certain court decisions have led to the need for the language of amended section 337(c). 5/

Finally, and perhaps most important, the ultimate issue of fairness of competition, to be determined by the President with the aid of the findings and recommendation of the Commission, would seem to require a consideration of validity in patent based cases. In cases

1/ Public Law 93-618, enacted Jan. 3, 1975.

2/ U.S. v. Bowling, 256 U.S. 484 (1921).

3/ See sec. 337(i), as amended by sec. 341 of the Trade Act of 1974 (Public Law 93-618).

4/ Sec. 337(c), as amended by sec. 341 of the Trade Act of 1974 (Public Law 93-618).

5/ U.S. Senate, Committee on Finance, Trade Reform Act of 1974: Report of the Committee on Finance . . . , 93d Cong., 2d sess. 196 (1974).

before the Commission such as the present case, the gravamen is the alleged infringement of a U.S. patent, such infringement constituting the unfair method of competition or unfair act which is requisite for relief. Under the patent laws, there can be no infringement of an invalid patent; we find that there can be no unfair practice associated with importing products covered by a patent invalid for the purposes of section 337. There is no indication that Congress intended that the Commission should treat a patent invalid for the purposes of section 337 any differently than a patent would be treated under the U.S. patent laws if a finding of invalidity were made under such laws, and we know of no reason to treat it differently. Not to deal with the issue of validity in cases such as the present one has the effect of depriving the President of our findings and advice on an issue crucial to his determination of whether there exists an unfair method of competition or unfair act, and could lead to the exclusion of articles from entry into the United States when in fact no unfair practice exists.

Consideration of the validity of claim 1 of patent '917

During the course of the subject investigation, respondents presented much evidence and made numerous arguments directed at showing that claim 1 of the patent in issue is invalid if reference

is made to the patent laws of the United States. We have examined and considered evidence and arguments based upon sections 102(b) and 103 of title 35 of the United States Code, as well as allegations of fraud on the Patent Office in the procurement of the patent in issue. In our opinion, the Commission should find claim 1 of patent '917 invalid for the purposes of section 337, and we so find. The basis for this opinion and finding is that we consider and find that the Commission has before it sufficient evidence to establish for its purposes that, by reference to the patent laws, a bar to claim 1 of the patent in issue, as expressed in the requirements of 35 U.S.C. 102(b), has been met. In referring to the patent laws we are not deciding the question of the validity of claim 1 for the purpose of giving effect to the patent laws; our decision refers to the patent laws for aid only in determining whether an unfair method of competition or unfair act is being practiced. Our decision with respect to invalidity, based on 35 U.S.C. 102(b), makes it unnecessary to consider the other arguments of respondents mentioned above.

The patent laws state that a person is not entitled to a patent if the invention for which a patent is sought was patented or described in a printed publication in the United States or any foreign country, 1/ or was in public use or sold in the United States,

1/ The respondents have not presented any allegations or evidence of prior printed publications, and the Commission has discovered none.

more than 1 year prior to the date of the application for the patent in the United States. 1/ The issue, in the context of this investigation, is whether a golf glove existed having all the features of the golf glove recited in claim 1 of patent '917 and, further, whether such golf glove had been in public use or sold more than 1 year prior to the application for patent '917.

Respondent Spalding has asserted that its so-called Feather-Fit golf glove and the Champion model #195 golf glove were sold in the United States more than 1 year before the filing date of the application for patent '917, and that these golf gloves anticipated the golf glove covered by claim 1 of patent '917 and, hence, render this claim invalid. As a consequence of our finding with respect to the Cecil gloves, discussed immediately below, it is unnecessary for us to consider these assertions.

Respondent Spalding has also asserted that the so-called Cecil golf gloves 2/ anticipate claim 1 of the patent and meet the use or sale requirement of 35 U.S.C. 102(b). We concur in this assertion based on the following. Stipulation 1 in hearing exhibit 10 (see pp. A21 and A25) indicates that complainants have agreed that the Cecil golf gloves contain all the elements recited in claim 1 of patent '917, and

1/ 35 U.S.C. 102(b).. This statement applies equally to an individual claim in a patent when it is not the patent as a whole, but rather a claim therein, that is in issue.

2/ See p. A21. These gloves were not shown to, nor were they apparently within the knowledge of, the patent examiner during the prosecution of the application for patent '917.

our examination of the Cecil gloves leads us to agree. The only issue is whether these golf gloves were in use or sold more than 1 year prior to the date of application for patent '917.

With respect to this issue, there are sworn depositions from five persons to the effect that the so-called Cecil golf gloves were offered for sale more than 1 year prior to the date of the '917 patent application; under the patent laws, for the purposes of 35 U.S.C. 102(b), an offer for sale is as good a sale. 1/ Four of the depositions support the statement of deponent Cecil in his deposition (the fifth) that he offered the Cecil golf gloves for sale during the relevant period.

While each deponent has some interest in seeing claim 1 of patent '917 held invalid, we do not believe nor find any evidence to the effect that five individuals have independently perjured themselves, and specifically there is no evidence of any contact between deponents to make their testimony consistent. The interest of some deponents in seeing claim 1 held invalid is no more than that of any producer of golf gloves; if evidence from all golf glove producers were to be disqualified for reasons of interest, it is difficult to see how direct testimony could ever

1/ For example, Amphenol v. General Tire, 397 F. 2d 431 (7th Cir. 1968), and Monogram Mfg. v. F&H Mfg., 144 F. 2d 412 (9th Cir. 1944). Evidence was also presented in these depositions regarding the ability to deliver commercial quantities of these gloves.

be adduced on the issue of offer for sale. The complainant had notice of each deposition and could have cross-examined each deponent, although only deponent Cecil was cross-examined. Moreover, the deposition testimony was detailed enough to demonstrate a familiarity with the subject gloves, and was consistent among deponents in relevant parts. In light of the well-known prior art regarding all elements of claim 1 of the patent, it cannot be suggested that the offer for sale was improbable.

There is corroborative evidence with respect to the deposition testimony. Documentary evidence has been received showing that the deponents were dealing with Cecil in the golf gloves business during the relevant period. Further, golf gloves which are claimed to have been the actual golf gloves offered for sale by Cecil were produced for Commission inspection, and a photograph of such golf gloves was submitted to the Commission. Upon inspection, various features 1/ of these golf gloves lead to the conclusion that they were made at the relevant time. Moreover, a close inspection of these actual golf gloves reveals that they are identical, in relevant respects, to the golf glove, or that in the picture of the golf gloves, identified as Cecil golf glove number 3, a subject of the depositions in question.

Complainants have attacked the weight to be accorded this evidence, but have not presented contradictory evidence. They have offered alternative interpretations to some evidence and generally asserted that all the deponents are partisan, interested parties.

1/ For example, the use of nonproduction logos and the general condition of the gloves.

We find that the evidence demonstrates in a clear and convincing manner that the Cecil golf gloves in question were offered for sale in the United States more than 1 year prior to the date for application for patent '917. 1/ This fact, when combined with stipulation 1 of hearing exhibit 10, with which we agree, leads us to conclude that claim 1 of patent '917 is invalid for the purposes of section 337, and that therefore no unfair method of competition or unfair act is being practiced in the importation of the golf gloves the subject of this investigation.

1/ The evidence thus overcomes the presumption of validity required by 35 U.S.C. 282. It is noted that the standard of proof we find satisfied, i.e., clear and convincing, is in keeping with the standard used by at least some of the Federal courts in cases under the patent laws involving proof of invalidity. The courts are not unanimous as to the appropriate standard, and for a discussion of this fact and reference to cases using the clear and convincing standard, see Stamicarbon, N.V. v. Escambia Chemical Corp., 430 F. 2d 920 (5th Cir. 1970). It is also noted that the fact that the testimony relied on to support a finding of invalidity in a patent case in a Federal court is in the form of a deposition does not deprive such evidence of probative weight. A.J. Industries, Inc. v. Dayton Steel Foundry Corp., 394 F. 2d 357 (6th Cir. 1968).

FINDINGS OF FACT AND STATEMENT OF REASONS
OF COMMISSIONER MINCHEW

I join with the other members of the Commission in finding that the criteria of section 337 are not satisfied in investigation No. 337-37. I find that, on the basis of the record in this investigation, claim 1 of U.S. Patent No. 3,588,917 is invalid for the purposes of section 337; this finding leads me to conclude that there is no unfair method of competition or unfair act being practiced in the importation or sale of the golf gloves, the subject of this investigation, which unfair practice is required by section 337 in order for relief to be given. I join in the statement of reasons presented by Commissioners Leonard and Ablondi with respect to the above findings.

I also concur in the statement of reasons of Commissioners Leonard and Ablondi with respect to the Commission's jurisdiction to consider the issue of the validity of a patent before it in a section 337 investigation. I would add the following statement only as a matter of emphasis, as it represents for me the most compelling reason with regard to the position taken on this issue.

Under section 337, the President is to determine, inter alia, whether an unfair method of competition or unfair act is being practiced in the import trade with respect to certain articles. An integral part of the President's consideration in making that determination in patent-based cases, where the unfair method or act complained of is patent infringement, must be whether the patent in issue (or claims therein) is valid. Since there can be no infringement of an invalid patent, for the

President to ignore the issue of validity could be very inequitable, as the issuance of an exclusion order based upon an invalid patent could follow, which issuance would obviously be devastating to trade in the articles, the subject of the President's determination.

Under the same statute, section 337, the Commission is to conduct an investigation and make findings and recommendations in order, inter alia, to aid the President in reaching his determination referred to above. Thus, it follows that in order for the Commission to give the President the findings and recommendations he may need to make his determination on an appropriate basis, and to avoid perhaps being inequitable itself, the Commission must consider the question of the validity of a patent in issue before it for the purposes of section 337 when such question is raised by the parties before it. To conclude otherwise would appear to attribute to Congress an intention to permit the President, and the Commission, to arbitrarily ignore an essential issue in the determination or finding to be made, with possible resulting inequity. I do not believe this was or is the intention of Congress.

INFORMATION OBTAINED IN THE INVESTIGATION

Product Description

Golf gloves, which are specifically designed to be worn while playing golf, are intended to provide a better grip on the golf club than that provided by the bare hand and to help avoid chafing of the hand. Nearly all golfers using a golf glove wear only one, generally on the left hand for right-handed golfers and the right hand for left-handed golfers. Thus, most golf gloves are made as single gloves rather than in pairs.

The practice of using a glove while playing golf did not become widespread until after World War II. The first golf gloves were slip-on, half-fingered types, the first full-fingered types appearing in the mid-1950's. The use of snap fasteners with a vent started in the late 1950's, and use of Velcro ^{1/} for the fastener, in the early 1960's. Elastic in various locations on the back of the glove has been known at least since the 1950's.

Golf gloves today are of two basic types--the full-fingered and the half-fingered. The full-fingered type, which covers the entire hand, is predominant. Most full-fingered gloves are made of thin leather, generally cabretta leather; they almost always have elastic strips sewn in the leather of the back to provide a snug, smooth fit across the palm of the hand, and have a snap or Velcro closing if made with a V-opening in the back. The full-fingered

leather gloves generally sell in the upper part of the price range

^{1/} Velcro is a closing device consisting of a hook tape and a loop tape. When the two tapes are pressed together, the hooks engage the loops effecting closing. It has easy peel strength and high sheer strength.

for golf gloves. Some full-fingered gloves are made of knit fabric and leather and of elasticized textile material; these are generally sold at a lower price than ones of leather. While full-fingered golf gloves are usually made of light materials (thin leather and fabric), some are made of heavier materials for use in cold weather (so-called winter gloves). Half-fingered gloves cover the palm of the hand and about half of each finger. They are made mostly of leather or of knit fabric and leather; some have elasticized fabric sewn across the palm to improve the golfer's grip on the club. Half-fingered gloves are usually less expensive than full-fingered gloves.

The gloves allegedly covered by the Antonious patent are full-fingered gloves which contain elastic strips embedded in the back with a V-opening closed by a Velcro tab. They are distinguished in several particulars from other golf gloves with elastic embedded in the back and a V-opening. These particulars are the depth of the V-opening, which extends close to the base of the thumb stall; the presence and positioning of elastic between the V-opening and the finger stalls, as well as adjacent to the flexible fastening Velcro tab; and the presence and positioning of the fastening tab itself. (See exhibit 2.)

Alleged Unfair Methods of Competition and Unfair Acts

Summary of complainants' contentions

The complainants in this investigation are Mr. Anthony J. Antonious and the Ajac Glove Corp. Complainant Antonious is an inventor who has been granted several U.S. patents covering inventions

in the field of athletic gloves, including the patent in issue (U.S. Patent No. 3,588,917). He is the owner of the Antonious patent.

Complainant Ajac is a Maryland corporation with a business address of P.O. Box 646, Ellicott City, Md. 21043. Ajac is controlled by Antonious, who is president and owns the majority of the corporate stock. Ajac has a beneficial interest in the patent in that it has exclusive distribution rights to the patented gloves. At present, Ajac is not carrying on its usual operations of distributing the patented gloves produced for its account, asserting that the imported gloves allegedly covered by the Antonious patent have put it out of this business.

Antonious, as owner of the patent, has licensed the Boyce-Lazarus Co., Inc., Johnstown, N.Y., a glove manufacturer, to make gloves covered by the Antonious patent, and Boyce-Lazarus is the sole licensed domestic or foreign manufacturer of such gloves. Production of the patented glove by Boyce-Lazarus began in October 1969. Ajac, as exclusive distributor of the patented gloves, has licensed Boyce-Lazarus both to produce gloves for distribution by Ajac, and to produce gloves in sublicense arrangements for distribution by several other firms, including Dunlop and K-Mart. Complainants have expressed a willingness to grant licenses on a reasonable royalty basis to all.

The contentions of the complainants regarding unfair methods of competition and unfair acts, as such terms are used in section 337, may be stated to be the following:

Spalding, Cecil, Mossberg, Lordon, Herrero, Eaton, Clover, and others import golf gloves which are covered by the claims of complainant Antonious' unexpired valid U.S. Patent No. 3,588,917 into the United States from various foreign jurisdictions, including Spain, England, Portugal, Japan, Hong Kong, and Republic of Korea 1/ and resell them, without authorization of complainants (and hence infringe the patent). This activity is alleged to constitute an unfair method of competition, and is the only activity so complained of. (See exhibit 1, pp. 2, 3, and 7; exhibit 4; and transcript, pp. 35, 36 and 81-87.)

In response to the contention of respondents that the Antonious patent is invalid, complainants contend that the Commission should not question the validity of the patent, and have further asserted that the patent is indeed valid and that the prior art cited by respondents neither anticipates the Antonious patent 2/ nor renders it obvious, 3/ nor is the patent indefinite so as to be invalid in light of the requirements of section 112 of title 35 of the United States Code (35 U.S.C. 112). (See brief for complainants, received by the Commission on September 6, 1974, pp. 2-5 and attachment A, and exhibit 5.)

In response to the contention of respondents that the Antonious patent was obtained by fraud on the Patent Office, and hence such

1/ See footnote 3, page 2.

2/ Respondents contend that the requirements of sec. 102(b) of title 35 of the United States Code result in the invalidity of the Antonious patent, since such section should have barred the issuance of that patent

3/ Respondents contend that the requirements of sec. 103 of title 35 of the United States Code result in the invalidity of the Antonious patent, since such section should have barred the issuance of that patent

patent is invalid or unenforceable, complainants have denied such contention and contend that the patent examiner was shown gloves embodying all the features known to complainant at the time of the prosecution of his patent application in the Patent Office. (See transcript, p. 420, and brief for complainants, received by the Commission on Sept. 6, 1974, p. 5.)

Summary of respondents' contentions

As previously noted, there are seven named respondents in this investigation, all of whom are contended to import and resell golf gloves allegedly infringing the patent of complainant Antonious. Of the seven, only respondent Spalding has taken an active interest in presenting information and its views since the institution of the preliminary inquiry, and in presenting its views has represented the interests of Eaton as well as its own (see letter from Eaton received by the Commission on Aug. 22, 1973). Other respondents have participated less actively in the investigation, and named respondents Herrero and Clover have not participated at all. Information presented to the Commission indicated that respondent Mario Herrero, S.L., of New York, N.Y., has not been authorized to represent Mario Herrero, S.L., of Madrid, Spain, and has not been sold or shipped any gloves from such Spanish company, although this is apparently the basis for naming Herrero a respondent. (See exhibit 33.)

The contentions of the respondents regarding the alleged unfair methods of competition or unfair acts (except infringement of the

Antonious patent by their imported articles) are confined to the answers of respondent Spalding to the issues raised by complainants. As noted above, respondent Eaton has stated that Spalding is representing its interests in this matter. The submissions of respondents Mossberg and Cecil are confined to a denial of any present infringement of the Antonious patent by their imported gloves. Respondents Lordon, Herrero, and Clover have not made any specific responses to complainants' contentions. Mario Herrero, S.L., of Madrid, Spain, although not a respondent, has made a statement to the Commission contesting any infringement of the Antonious patent by any glove which it exports to the United States.

The contentions of respondents are the following:

With regard to the validity of the Antonious patent, which respondent Spalding asserts should be considered by the Commission, Spalding contends that the patented glove is no invention because the combination of features employed in the patented glove is obvious to anyone skilled in the art. It asserts that all the various elements of the claim in issue of the Antonious patent, such as the V-opening and the use of elastic in the back of the glove, were known prior to the application by Antonious for the patent. Combining all the various features into a single glove is asserted to be an obvious step, hence not patentable. 1/

1/ This contention is based on 35 U.S.C. 103, which provides that a patent may not be obtained "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." Thus, in terms of this case, if the knowledge disclosed by patents, publications, and gloves in use in the United States prior to the Antonious invention was such that the subject matter of the Antonious patent would have been obvious, i.e., required no exercise of inventive faculty, to a person of ordinary skill in the art with knowledge of the prior disclosed art, then the Antonious patent should not have issued, and, moreover, if issued, it would be invalid.

(See transcript, pp. 418-423 and 428-433.) Spalding further asserts that the patent is invalid because of the existence of gloves which revealed the combination of features more than 1 year prior to the Antonious application for a patent; under the patent law this would bar the issuance of the patent. 1/ Several gloves are contended to anticipate the Antonious patent. (See transcript, pp. 338-356.) Respondent Spalding also contends that the language in the claim in issue of the Antonious patent is ambiguous, and the claim therefore is invalid as violative of 35 U.S.C. 112, which requires that the invention be disclosed clearly, fully, concisely, and in exact terms so as to allow a person skilled in the art to which it pertains to make and use the invention. 2/ (See exhibit 7, pp. 3 and 4.)

1/ See 35 U.S.C. 102(b), which provides that a person is not entitled to a patent if the invention was, inter alia, in public use in the United States more than 1 year prior to the date of the application for the patent in the United States. Such public use is said to be a "bar" to the issuance of a patent, and renders invalid any patent issued when the existence of the bar is established.

2/ 35 U.S.C. 112 reads:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Spalding also contends that complainant Antonious engaged in a fraud on the Patent Office in securing his patent. It is asserted that Antonious knew of several gloves which were relevant prior art to the claimed invention for which his patent was issued, but did not reveal these gloves to the patent examiner as he was required to do. This concealment is alleged to operate to invalidate, or prevent enforcement of, the Antonious patent in a Federal court proceeding and, it is asserted, should have the same effect in a Commission proceeding.

(See exhibit 7, p. 5, and transcript, pp. 338-341.)

Finally, respondents contend that there is no infringement of complainant's patent by the gloves imported by respondents. Respondent Spalding asserts that the gloves it presently imports embody only features which were in gloves marketed more than 1 year prior to the filing of the application for the Antonious patent with the Patent Office, and hence do not infringe the Antonious patent. (See transcript, p. 443, and exhibit 6, pp. 8 and 9) Respondents Cecil and Mossberg have also denied infringement. (See exhibit 9.) Mario Herrero, S.L., Madrid, Spain has asserted that any gloves it exports to the United States do not infringe owing to a lack of an essential element required by the Antonious patent claims; as will be recalled, importation of these gloves is apparently the basis for naming Mario Herrero, S.L. of New York, N.Y., as a respondent (See exhibit 33, pp. 1-6.)

The patent in issue

The patent involved in this investigation is U.S. Patent No. 3,588,917, entitled "Golf Glove." The patent covers a glove which provides a taut, snug fit on the palm and fingers by providing elastic means across the back of the glove which cooperate with a fastener which closes the slit in the back of the glove that permits insertion and removal of the hand. While the title of the patent is "Golf Glove," the claims cover an athletic glove usable in many sports where it is desirable to wear a glove with a taut, snug fit. The purpose of the invention is to meet the need for a glove which will permit the easy insertion and removal of the wearer's hand while providing a taut, snug fit throughout the life of the glove, even though the material from which the glove is made will tend to stretch out of shape during its life.

The application for the Antonious patent was filed on July 9, 1969, with Anthony J. Antonious named as inventor. After several "office actions" by the U.S. Patent Office (considerations by the patent examiner of the application, including rejection of claims, and amendments of the application by Antonious (responses to the rejection of claims)), the patent was issued on June 29, 1971, with expiration 17 years from that date. Antonious is the owner of the patent.

The Antonious patent is presently the subject of concurrent litigation. On April 6, 1973, Commission respondent Spalding filed suit in the U.S. District Court for the District of Maryland

against Commission complainants Antonious and Ajac, seeking declaratory and injunctive relief. Further information on this litigation is found on page A-32 of this report.

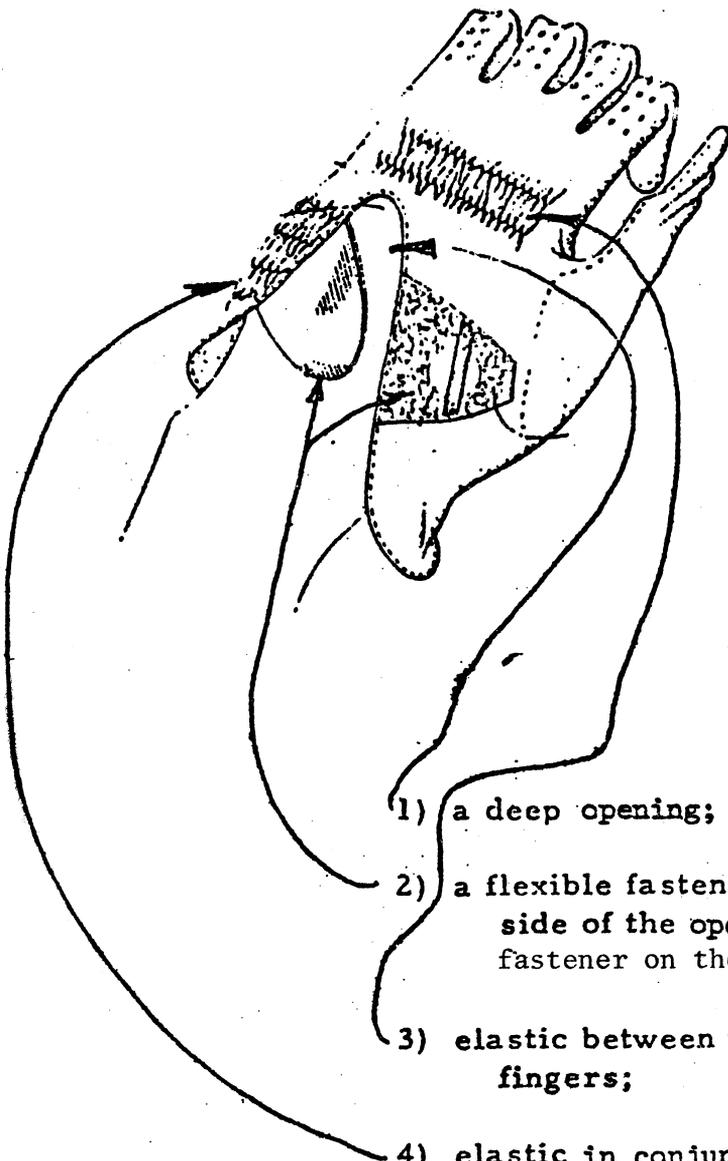
The claim of the patent in issue is claim 1. ^{1/} A convenient breakdown of the elements of claim 1, in the language of the claim, is as follows:

- A. an athletic glove comprising a hollow flexible body member having front and back portions; stalls for at least four fingers of the wearer projecting from the body member;
- B. the back portion being provided with an opening extending from the end of the body member to approximately the stalls;
- C. first elastic means located in the back portion between the glove stalls and the opening;
- D. a flexible fastening tab extending from one edge of the opening; a complementary fastener located adjacent the opposite edge of the opening on the back portion, and
- E. second elastic means in conjunction with the back portion adjacent the flexible fastening tab.

Reading claim 1, the basic elements recited in combination are (1) a glove (material covering the entire hand and either all or a portion of the fingers) having a deep opening on the back with one end of the opening extending along the wrist edge of the glove and the other end of the opening reaching to approximately the finger stalls of the glove; (2) a flexible fastening tab extending from one edge of the opening, with a complementary fastener located adjacent to the opposite

^{1/} See exhibit 10, item 4. An examination of all the imported gloves available to the Commission leads to the conclusion that claim 1 is the only independent claim that can possibly be construed to read on any of the imported gloves, and since only one claim need be infringed in order for the patent to be infringed, there is no need to consider any other dependent claims of the patent.

edge of the opening on the back portion of the glove; (3) a strip of elastic embedded in the material in the back portion of the glove and located between the end of the opening nearest the finger stalls and the finger stalls; and (4) one or more other strips of elastic in conjunction with the back portion of the glove, and adjacent to the flexible fastening tab. The following figure shows a possible embodiment of the claim using a Velcro tab and complementary fastener, and is a representation taken from complainant's drawings attached to the patent; the numbers in the drawing correspond to the numbers used in the text. There may be other embodiments, such as an opening consisting of just a slit, or a second elastic means connecting the fastening tab to the back portion of the glove without such means being embedded in the back portion but only attached along one edge of the means to the back portion of the glove.



- 1) a deep opening;
- 2) a flexible fastening tab, e.g., Velcro, on one side of the opening attachable to a complementary fastener on the other side of the opening;
- 3) elastic between the top of the opening and the fingers;
- 4) elastic in conjunction with the back portion of the glove and adjacent the Velcro tab.

Contentions of the complainants and of the respondents as to the patent in issue

As a result of the submissions of the parties and the requirements of section 337 for relief, several distinct issues have arisen during investigation 337-37 and the preliminary inquiry preceeding it (337-L-56) concerning the patent in issue. These issues are presented below, and with the presentation of each issue there will be briefly given the information available to the Commission which is relevant to that issue, including the arguments of the parties. The information given below is not intended to be an exhaustive presentation of information available to the Commission, but rather to be a fair reflection of such information. The issues to be presented involve the question of whether, in the terms of this investigation, the respondents named by complainants are importing into the United States or are selling imported golf gloves made in accordance with claim 1 of valid, unexpired U.S. Patent No. 3,588,917, owned by complainant Antonious, without the authorization of complainants.

Ownership of the patent.--Complainant Antonious asserts that he is the owner of U.S. Patent No. 3,588,917 (transcript, p. 162), which was issued on June 29, 1971, and which will expire 17 years from that date. This patent, as previously discussed, covers an athletic glove which may be used, inter alia, as a golf glove.

Respondents do not deny the above assertion.

The file wrapper relating to U.S. Patent No. 3,588,917 discloses

that the patent was issued with Antonious as inventor, and no record of assignment is disclosed.

Infringement of the patent.--Complainants assert that the named respondents are importing and selling golf gloves made in accordance with the Antonious patent without authorization, i.e., infringing the Antonious patent. The respondents which have answered the complaint deny that they are importing, or selling after importation, any gloves which infringe the claims of the patent, but do not deny that they are not authorized by complainant to import, or sell after importation, any gloves.

With regard to importation and sale of the allegedly infringing gloves by the various respondents, information available to the Commission indicates that Spalding is the supplier of the imported gloves allegedly infringing the Antonious patent and marketed by respondent Eaton. Also, the imported allegedly infringing gloves of respondents Cecil, Mossberg, and Lordon are essentially the same type of glove. (See transcript, pp. 36, 357, and 444-445.) An inspection of the gloves in question shows that the Spalding Elite I imported glove is virtually identical in relevant respects to the imported Eaton gloves (see exhibit 12), while imported Cicil Pederson model glove is virtually identical to the allegedly infringing glove of respondent Lordon (see exhibit 13). It is asserted that Mossberg is selling the gloves imported by Cecil, so that any contentions concerning the articles imported and/or sold by these respondents apply to both these respondents. (See exhibit 9; transcript, p. 36.)

With regard to the alleged infringement of the Antonious patent by the gloves imported by respondents Spalding and Eaton, complainants and respondent Spalding have stipulated that claim 1 of the Antonious patent reads on the gloves shown in exhibit 12 designated as the Spalding Elite I, the Spalding Tournament, and Eaton's gloves model numbers 3300, 3260, 3250, 3210, 3205, and 3200. (See exhibit 10, stipulation 2.) This is asserted by complainants to amount to an admission of infringement, assuming the patent to be valid. (See transcript, p. 61.) Complainants do not contend that the Spalding Winter, Spalding Classic, and Spalding Palmtex gloves infringe, and make no allegations against various Spalding private label brands shown in exhibit 12. (See transcript, p. 82.) Complainant Antonious testified that Spalding's imported Elite II, shown in exhibit 12, also contains the four basic elements of claim 1, and hence infringes. (See transcript, p. 83.) The above Eaton and Spalding gloves are the only gloves known to be imported by those companies.

Respondent Spalding, representing itself and Eaton, stated at the hearing in this investigation that the stipulation referred to above (exhibit 10, stipulation 2) by complainants would result in a conclusion of infringement of the Antonious patent by the gloves the subject of that stipulation if the Antonious patent was presumed valid. (See transcript, p. 357.) However, Spalding also asserted in the hearing that its imported gloves, and presumably those of Eaton, contain only features known in the art more than 1 year prior to the Antonious patent, and thus do not infringe. (See transcript, p. 443, and brief for Spalding, received by the Commission on Sept. 6, 1974, p. 15.) The prior art cited includes Spalding's

Feather-Fit glove (exhibit 39, glove 3) and the Cecil gloves the subject of exhibit 10, stipulation 1 (exhibit 39, gloves 4, 7, 8, and 11). While the Cecil gloves the subject of stipulation 1 were not claimed to be gloves actually made more than 1 year prior to application for the Antonious patent, Spalding submitted a photograph of gloves allegedly made more than 1 year prior to the application which are asserted to be identical to glove 11 of exhibit 39, referred to in stipulation 1. (See submission of respondent Spalding received October 1, 1974.)

With regard to the alleged infringement of the Antonious patent by the gloves of Cecil, Mossberg, and Lordon, complainant Antonious testified that the Cecil Pederson model glove does infringe his patent, as does the Lordon glove. (See exhibit 13.) As will be recalled, Mossberg markets the glove imported by Cecil. The Cecil and Lordon gloves were both asserted to contain the four essential elements of claim 1 of the Antonious patent. (See transcript, pp. 84-85.)

Respondents Cecil and Mossberg assert that they do not import and/or sell any glove which infringes the Antonious patent, and a sample glove of the type they assert they presently import and/or sell is shown as the Velcro #1 model of the Cecil International Co. in exhibit 13. (See exhibit 9.) Inspection of this glove shows that there is no elastic means between the opening on the back of the glove and the finger stalls. Complainants introduced, as exhibit 14, a glove asserted to have been sold by Cecil to a golf pro shop; the glove

is a product of Spain and is asserted by complainants to be infringing the Antonious patent. The glove was introduced to demonstrate that Cecil is still importing infringing gloves, in spite of its assertions, since the glove was purchased on June 25, 1974, in Maryland. (See transcript, pp. 85-87.)

Respondent Lordon has not answered the charges of infringement with respect to the glove it allegedly imports, shown in exhibit 13 as Lordon model #201.

With respect to the alleged infringement of the Antonious patent by gloves imported and sold by Mario Herrero, S.L., of New York, N.Y., complainants have not produced for the Commission a glove or representation of a glove imported by Herrero which allegedly infringes the Antonious patent. Complainants' attorney apparently has in his possession an advertisement relating to a Spanish glove offered for sale by respondent Herrero, but has not offered it to the Commission. (See exhibit 33, pp. 5-6.) Aside from assertions such as appear on page 35 of the transcript of the hearing to the effect that Herrero imports and/or sells an infringing glove, there are no specific allegations of infringement by respondent Herrero. The Commission has not secured an example of a golf glove imported or sold by respondent Herrero from any source.

While respondent Herrero has not answered the assertions of infringement made by complainants, interested party Mario Herrero, S.L., Madrid, Spain, the foreign producer of golf gloves which apparently

provide the basis for any allegations of infringement by gloves imported by respondent Herrero (see exhibit 33, pp. 5-6), has submitted a statement to the Commission regarding the gloves which it exports to the United States. (See exhibit 33.) The gloves submitted with the statement are asserted to be those gloves, and inspection reveals that they do not have an elastic means between the opening on the back of the glove and the finger stalls.

With respect to the contention by complainants that respondent Clover imports and sells golf gloves which infringe the Antonious patent, complainants have submitted to the Commission a sample of a glove which they allege is imported and sold by Clover. (See exhibit 32.) Complainant Antonious testified that the glove which was submitted does infringe his patent. (See transcript, pp. 186-188 and 471-476.)

Respondent Clover has not responded to the allegations made by complainants of infringement by the glove it imports. The Commission has been unable to ascertain whether this glove is presently being imported.

Validity of the patent.--Respondent Spalding argues that the Commission should consider the validity of the Antonious patent, because not to do so could work a grave injustice. (See transcript, pp. 357-359.) Spalding argues that decisions of the Court of Customs and Patent Appeals which are cited for the proposition that in a section 337 investigation the Commission must accept as valid any patent duly issued by the Patent

Office are not absolute or immutable. Spalding asserts that such C.C.P.A. decisions are not controlling when, as in this investigation, evidence as to patentability is presented to the Commission which was never presented to the Patent Office. Indeed, it is argued that in this case there is no need for the Commission to decide any technical patent-law questions regarding validity, such as whether prior art anticipates the Antonious patent claim in issue, since there is a stipulation on the matter. Rather, all the Commission need decide is a purely factual issue of when in fact a particular prior art glove was offered for sale. (See brief for Spalding, received by the Commission on September 6, 1974, pp. 7-11.)

Complainants have argued that the C.C.P.A cases on the issue of the Commission considering the validity of a patent before it in a section 337 investigation are uniform in holding that the Commission may not question the validity of such a patent, if regularly issued, and complainants urge that the Commission follow these decisions. Commission precedent is also cited, and the complainants argue that there are strong policy reasons for the Commission to consider a patent valid if duly issued and not to question that validity, including that the facts can be better developed in a trial, and that the respondents can always institute a declaratory judgment action (as Spalding has done) to test validity, thus minimizing or eliminating any possible unfairness resulting from the Commission following its precedent with respect to considering the validity of a patent.

35 U.S.C. 102(b).--Respondents have argued that the Antonious patent is invalid because the patent laws provide that a person is not entitled to a patent if his invention was patented or described in a printed publication in the United States or any foreign country, or was in public use or sold in the United States, more than 1 year prior to the date of the application for the patent in the United States, 1/ and that in fact the Antonious invention was in public use or sold in the United States more than 1 year prior to the filing of Antonious' patent application in the United States.

Respondent Spalding has asserted that three different gloves anticipate Antonious' invention and thus render it invalid.

(a) Spalding argues that its Feather-Fit glove does indeed contain all the elements disclosed by the Antonious patent. Spalding states that the Feather-Fit literally incorporates all the elements of claim 1 of the Antonious patent, as exhibit A of exhibit 7 is said to demonstrate. (See exhibit 7, pp. 1-2, and transcript, pp. 338 and 371.) The Feather-Fit glove has been asserted to have been on sale and in public use in the United States since 1963, and complainant has stipulated to this. (See transcript, p. 338, and exhibit 10, stipulation 6.)

(b) Spalding also argues that the so-called Champion model #195 glove contains all the elements disclosed by the Antonious patent. It is asserted to incorporate the deep vent, flexible fastening system, and dual elastic means, as taught by claim 1 of the Antonious patent. (See transcript, pp. 340, 371, 377, and 430-431.) The Champion model

#195 glove is stipulated by complainants to have been in public use or on sale in the United States more than 1 year prior to the date of the Antonious patent application. (See exhibit 10, stipulation 6.)

(c) Spalding also contends that claim 1 of the Antonious patent is anticipated and rendered invalid by gloves indentified as the Cecil gloves. (See transcript, pp. 441-442.) These gloves are ones which respondent Cecil stated, under oath, that he offered for sale 1/ in 1966 and 1967 to various individuals. Various deponents have supported this testimony. (See transcript, pp. 341-354, and depositions referred to therein.) The Cecil gloves in question are gloves 4, 7, 8, and 11 shown in exhibit 39. These same gloves have been introduced into evidence in the concurrent litigation in the District Court in Baltimore, Md. Complainant has stipulated that claim 1 of the Antonious patent reads on these Cecil gloves. (See exhibit 10, stipulation 1).

There is no testimony that the particular Cecil gloves shown in exhibit 39 actually existed more than 1 year prior to the application date for the Antonious patent; rather, respondents contend that they are identical to gloves which did exist at that time. (See transcript, pp. 378-379 and 388.) However, during the hearing of August 23, 1974, respondent Spalding submitted samples of gloves for Commission inspection which were alleged to have been submitted to the First Flite Co. by Cecil during the period in 1966 and 1967 in which the Cecil gloves were being offered. They are asserted to be identical to the exemplar Cecil glove which is depicted as glove 11 in exhibit 39. (See

1/ Under the patent laws, an offer for sale fulfills the sale requirement of sec 102(b). See Amphenol v. General Tire, 397 F.2d 431 (7th Cir. 1968)

transcript, pp. 480-488.) The gloves were obtained from deponent Lew Oehmig, who testified in his deposition that they were offered for sale to First Flite Co. in late 1966 or early 1967. (See exhibit 37.) A photograph of these gloves was submitted to and received by the Commission on October 1, 1974.

The following is a discussion of complainants' responses to the contentions of respondent Spalding on the question of anticipation of the Antonious patent under 35 U.S.C. 102(b).

(a) Complainants deny that the Feather-Fit glove alone anticipates the Antonious glove. While agreeing that this Spalding glove does have the elastic means between the opening on the back of the glove and the finger stalls, they assert that there are no real anticipations of elements other than this. The opening is said to be only at the wrist in the Feather-Fit (while, as can be seen in the drawings of exhibit 1, attachment A (the Antonious patent), it extends well down the back of the hand in the Antonious glove). Complainant states that therefore the opening in the Spalding glove is of little effect in helping the glove off and on, and of no effect in keeping the glove taut across the palm. (See exhibit 5, p. 2.) It is noted that in several places in the patent there is language which could be interpreted to mean that a purpose and result of the opening in the Antonious glove is to help give a taut fit, even though it is specifically designed to permit easy entry and removal of the hand. For example, in the description of the preferred embodiment (see exhibit 1, attachment A) it is stated that

"the back portion . . . includes appropriately placed elastic strips . . . which are structurally arranged to cooperate with the deep vent opening to provide a taut snug fit" Also, in the amendment of the patent application made on April 17, 1970, by complainant (as found in the official file wrapper), it was stated on page 6 that the "particular vent in the present application likewise helps provide the taut compact fit"

Further, complainants have argued that the depth of the opening in the Feather-Fit is not sufficient to anticipate the corresponding feature of Antonious' glove. (See transcript, p. 338.) The claim language speaks of the opening extending to "approximately the [finger] stalls," and in the description of the preferred embodiment in the patent it is asserted that the "deep vent opening . . . extends . . . to approximately the base of the knuckles." (Emphasis added.) (See exhibit 1, attachment A.)

Complainants also have asserted that in the Feather-Fit the wrist opening is closed by a snap tab and that there is elastic only around the wrist, and that both features are different from those found in the Antonious glove. (See exhibit 5, p. 2.) It is clear from a reading of the description of the preferred embodiment that the flexible tab in the Antonious glove is meant to help keep the glove tight across the palm of the hand and therefore must be appropriately located, as when in describing figure 11 of the drawings attached to the patent in column 5 of the patent it is stated that "the location of the fastener just

below the knuckles ensures the positioning of the forces across the base of the palm" It is also clear that the elastic means adjacent to the fastener is to help keep the glove taut across the palm, as it is stated in column 4 of the patent that "the elastic material . . . is positioned . . . on the back of the hand to ensure a taut fit across the palm." These additional differences in features between the Feather-Fit and the glove described in the patent, as well as the differences in the openings on the back of the hand, are said to be such as to indicate that the gloves are "wholly different in concept, design, function and result" (see exhibit 5, p. 2), and thus that there is no anticipation by the Feather-Fit glove.

(b) Complainants also assert that the Champion model #195 glove does not anticipate the Antonious patent. It is argued that while the subject glove discloses certain of the features disclosed by the Antonious patent, the positioning of these features is such as to render the construction of the glove "entirely different." (See transcript, p. 267.) Complainants have stipulated that the Champion glove contains the deep vent and elastic between the vent and finger stalls of the glove. (See exhibit 10, stipulation 10, and transcript, p. 228.) However, it is argued that the Champion glove does not disclose the correct placement of the tab fastener and its associated elastic means, nor is the tab fastener itself within the meaning of "flexible" fastening system as disclosed by the Antonious patent. (See transcript, p. 272.) Specifically, it is stated by complainants that the fastening tab and associated elastic means are positioned on the wrist in the

Champion glove, while the patent discloses the placement of these features as being upon the back of the hand, well below the wrist. (See transcript, p. 242.) Also, it is asserted that the fastening system disclosed by the Champion glove, consisting of a snap fastener, is not a flexible system, but rather rigid, and hence does not anticipate the fastening system disclosed by the Antonious patent. (See transcript, pp. 237, 274, and 275.)

(c) With regard to the anticipation of the Antonious patent by the Cecil gloves, complainants have stipulated that the Antonious patent reads on the gloves, i.e., every feature disclosed by the Antonious patent is reflected in the Cecil gloves. The basic contention of complainants is that the public use or sale requirement of 35 U.S.C. 102(b) has not been shown, and they concede that if this was shown, it would invalidate the Antonious patent. (See brief for complainants, received by the Commission on September 6, 1974, exhibit A.) Complainants' position is that the proof offered to show public use or sale consists of deposition testimony by "partisan" parties, unsupported by definitive documentary evidence, with no dated and corroborated proof that the the Cecil gloves were sold or offered for sale at the critical point in time. (See brief for complainants, received by the Commission on September 6, 1974, exhibit A.) It is pointed out that the Cecil gloves which were shown to deponents were not gloves proven to have been made in 1966 or 1967. (See exhibit 20, p. 50.) Further, complainants assert that the gloves which were shown to the Commission

during the August 23, 1974, hearing (a photograph of which was received by the Commission on October 1, 1974) have not been shown by document or otherwise than by oral testimony to be the actual gloves offered by Cecil. (See exhibit 37, deposition of Oehmig.)

35 U.S.C. 103.--The patent laws require that in order to be patentable, an invention must not be obvious, at the time the invention is made, to a person having ordinary skill in the art related to the invention. 1/ In other words, more ingenuity and skill must be required in developing the invention than that possessed by an ordinary mechanic acquainted with the business. 2/ Respondent Spalding argues that all the elements of claim 1 of the Antonious patent were known prior to the application for the patent by Antonious, and that Antonious only combined these elements in an obvious manner. With regard to the hollow, flexible body with front and back portions and the finger stalls recited in the patent, it of course cannot be claimed that these features of the glove were previously unknown. With regard to the other elements of the claim, the relevant prior art described by respondents and the arguments of the parties regarding obviousness are presented below.

Spalding asserts that the Champion model #195 glove (exhibit 39, glove 1) has been stipulated by complainants to contain the opening on the back of the glove and the elastic means between the opening and the finger stalls disclosed in claim 1 of the Antonious patent. (See

1/ 35 U.S.C. 103.

2/ Hotchkiss v. Greenwood, 11 How. 248, 267 (1850).

exhibit 10, stipulation 10.) Spalding further contends that the model #195 glove contains the elastic means adjacent to the tab fastening system disclosed by claim 1 of the Antonious patent, and also asserts that it contains a flexible fastening tab attached to the edge of the opening. (See transcript, pp. 419 and 420.) Spalding contends that even if it is argued that the model #195 glove does not have the flexible tab attached to the edge of the vent, the Feather-Fit glove (exhibit 39, glove 3) does, and one of complainants' own witnesses testified to that effect, as well as that it would have been obvious to use the Feather-Fit system in the Champion glove. (See transcript, pp. 146-147.) Velcro used as a fastening system was also known in the art more than 1 year prior to the filing date of the Antonious patent, and it is claimed that it would be obvious to use it in a golf glove. (See transcript, pp. 421 and 422.)

Spalding argues that combining the features shown by the above prior art is obvious within the meaning of 35 U.S.C. 103. This is true, it asserts, even if one assumes, as argued by complainant, that the flexible fastening tab and its adjacent elastic means must be located on the back of the hand, and not the wrist. Spalding argues that moving the fastening tab and elastic on the Champion model #195 glove to the back of the hand is obvious (see testimony of Cassell quoted in transcript, pp. 423 and 428), and even if it were not obvious, the so-called Fritchey glove (exhibit 39, glove 9; see also transcript, pp. 431 and 432) shows a tab in that placement, and it

would require no inventive skill to combine the placement shown in the Fritchey glove with the features shown by the other prior art. (See transcript, p. 429.)

With respect to the prior art cited by respondent Spalding, complainants assert that the features of such gloves are not the same as those disclosed by the Antonious patent. It is asserted that the fastening system found in the Feather-Fit and Champion model #195 gloves are rigid fasteners, in that they are snap fasteners with only one possible closed position, as opposed to many adjustable positions possible with Velcro fasteners. (See transcript, pp. 236-237, and 274-276.) Further, it is asserted that the Antonious patent disclosed the placement of the flexible fastening system as being on the back of the hand (see transcript, pp. 278-280), and that the prior art cited by respondents, specifically the Champion model #195 glove, does not disclose this feature (see transcript, pp. 237-238); the prior art gloves are said to show the fastening system at the wrist only, except for the Fritchey glove. The placement of the so-called second elastic means is said not to be disclosed by the references cited; the references are said to show the elastic at the wrist, not on the back of the hand as disclosed by the Antonious patent. (See transcript, pp. 242, 243, 271, and 272.)

Complainants also assert that the Fritchey glove is questionable as a proper reference absent any real proof of its use in the United States (See exhibit 5, pp. 4 and 5.) Respondent Spalding's attorney has offered hearsay evidence to the effect that a Mr. John Summerville

of Cumberland, Md., personally distributed at least 10 dozen of the Fritchey gloves in the United States, and that Mr. Fritchey sold these gloves to the personnel at an U.S. air base in Spain, and that it may be assumed that some of these gloves entered the United States with the returning personnel. (See transcript, pp. 365 and 366.) No other evidence has been offered on this matter, except to the effect that Mr. Fritchey would not testify for respondent Spalding without being "paid off." (See transcript, p. 373.)

It is also argued by complainants that even if the various individual elements were known in the prior art, the combination of the elements into one glove was not obvious. (See exhibit 5, pp. 3 and 4.) As further evidence of the nonobviousness of the Antonious patent, complainant asserted in exhibit 5, page 4, that--

complainant's glove has been endorsed by numerous professional golfers, including Gary Player Spalding's rip off of complainant's glove has resulted in a significant commercial success for the Spalding ELITE model glove. Spalding's counsel has indicated to Judge Harvey in a related Civil Action in Baltimore, that it is willing to stipulate to this commercial success. Moreover, Spalding, which is responsible for probably most of the imports, adopted its ELITE model after seeing complainant's glove on sale in Florida, ordering several dozen from complainant, and telling complainant that it was considering taking a license Not only is imitation one of the sincerest forms of flattery, it is also a good indication of the value of an invention.

35 U.S.C. 112.--The patent laws require that an applicant for a patent distinctly claim the subject matter which the applicant regards

as his invention. 1/ The courts have said that the purpose of this provision is to avoid discouraging experimentation by creation of an area of uncertainty as to the scope of an invention. 2/

Respondent Spalding argues that the parameters of the depth of the opening on the back of the glove are not clearly delineated in the Antonious patent. Spalding argues that such parameters could have been stated with particularity, and the use of the phrase "to approximately the stalls" is ambiguous. (See exhibit 7, pp. 4 and 5, and transcript, pp. 289-293.)

The complainants assert that the claims must be read in light of the drawings and specifications. (See transcript pp. 292 and 293.) During the prosecution of the patent application, the Patent Office examiner required, as shown on page 2 of his office action of December 24, 1969, the removal from the claims of references to the anatomy of the hand indicating the scope of the element reciting an opening "to approximately the stalls." (See exhibit 5, pp. 2 and 3.) In complainant's patent application of July 9, 1969, on page 7, it was stated that "the back portion [of the glove] has a deep vent opening . . . which extends from the wrist to approximately the base of the knuckles" In the drawings accompanying the patent (see exhibit 1, attachment A), it can be seen that the depth of the opening appears to vary considerably between figures 1, 2, and 3.

1/ See footnote 2, p. A-7.

2/ See Jones Knitting Corp. v. Morgan, 361 F. 2d 451 (3rd Cir. 1966).

Fraud on the Patent Office.--Respondent Spalding has asserted that complainant Antonious, at the time he was prosecuting the patent application for the Antonious patent, knew of the 1963 Spalding Feather-Fit model golf glove and of the Champion model #195 glove, and did not reveal the existence of such gloves to the patent examiner approving the patent application, and that therefore the patent issued without benefit or knowledge of the Spalding and Champion gloves. By analogy to present law where a court on equitable principles will refuse aid to the patentee who has practiced fraud on the Patent Office, 1/ respondents urge that the Commission not aid patentee in this case. (See exhibit 7, p. 5, and transcript, pp. 338-341 and 361.) With particular reference to the Champion glove, Spalding, at the deposition of complainant Antonious, elicited statements from Antonious that he knew of "that" glove (Champion model #195) "when I [Antonious] was working on my glove." (See exhibit 17, pp. 197 et seq.) Complainant Antonious has testified that he did not show the patent examiner the model #195 glove. (See transcript, p. 256.)

Complainant Antonious has asserted that he did show the Feather-Fit glove to the patent examiner during the prosecution of his application for the Antonious patent. (See transcript, p. 339.) With regard to the nondisclosure of the Champion model #195 glove, it is the position of the complainant that one is not required to show particular prior art to the patent examiner when the examiner already knows of prior art as relevant, and that in his case the examiner did know of such relevant

1/ See Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965).

prior art. (See transcript, pp. 262 and 376, and brief for complainants, received September 6, 1974, p. 5.) Further, complainant Antonious asserted during the Commission hearing into this matter that his testimony in his deposition to the effect that he was aware of the Champion model #195 in particular was not correct, and that what he intended to assert was that he was aware of "that glove type," i.e., of gloves having the features of that glove. (See transcript, pp. 268 and 269.)

Concurrent litigation involving the patent in issue

As indicated previously, the Antonious patent is presently the subject of concurrent litigation. On April 6, 1973, Commission respondent Spalding filed suit in the U.S. District Court for the District of Maryland against Commission complainants Antonious and Ajac, seeking declaratory and injunctive relief. The complainant in the litigation alleges invalidity of the patent and absence of infringement, as well as fraud in the procurement of the patent by Antonious. Antonious and Ajac have answered the conterclaimed, seeking a judgment of infringement and asking for an accounting. Commission respondent Spalding has asked for several postponements and delays of the court proceedings, while Commission complainants have not. The date for trial before a jury in this litigation has not been set at this time.

The patent has not been in litigation prior to the current litigation. However, the Professional Golf Co., 99 Tremont Street, Chattanooga, Tenn., was charged with infringement by complainant, and settled for past infringement in 1971 for \$2,000 on sales of approximately 30,000 units.

U.S. Industry Allegedly Injured

Complainants assert that the domestic industry which is being injured by the imported gloves which infringe the Antonious patent consists of the patentee and his sole domestic licensee, which is engaged in the manufacture of gloves covered by the Antonious patent. (See transcript, p. 76.) Complainant Ajac, controlled by complainant Antonious and engaging in distribution of the patented glove produced in the United States by complainant Antonious' licensee, is also alleged to be part of the industry. (See transcript, p. 314, and brief for complainants, received September 6, 1974, p. 5.) The gloves being produced in the United States under the claims of the Antonious patent by Boyce-Lazarus, the licensed manufacturer of the patented gloves (see transcript, p. 100), include all those gloves shown in exhibit 11 except for the Slam-It 2 and 4, the Winter pairs, and the Red Eye, Slam-It Strap, and model #56-600. (See transcript, pp. 81 and 132-134.)

Respondent Spalding has argued that complainant Antonious and complainant Ajac are not part of any industry. Spalding asserts that Antonious' connection to an industry producing gloves under his license consists of collecting royalties, and contends that the collection of royalties is not an industry. Ajac does not manufacture any gloves either, and it is suggested by the respondent Spalding that Ajac does not appear to be doing anything now, not even distributing. (See transcript, p. 116, and brief for Spalding, received by the Commission on September 6, 1974, p. 16.) Complainant Antonious has stated that he is

essentially getting a royalty payment only (see transcript, p. 169), and that Ajac is not now distributing any gloves, but would like to get back into such business (see transcript, p. 206).

Respondent Spalding has not contested the position of Boyce-Lazarus as a part of the domestic industry, nor has it alleged that such industry involves production other than that by Boyce-Lazarus.

U.S. Tariff Treatment

Golf equipment and parts other than golf balls were dutiable at 15 percent ad valorem on August 31, 1963, when the Tariff Schedules of the United States (TSUS) were adopted. A gradual decrease in the duty occurred as a result of concessions under the General Agreement on Tariffs and Trade, lowering the rate to 7.5 percent ad valorem on January 1, 1972. The same rate is in effect at the present time under item 734.77 of the TSUS.

The various rates of duty applicable to golf equipment other than golf balls during 1963-74 are given in the following table.

Golf equipment and parts other than golf balls (TSUS item 734.77):
U.S. rate of duty on Aug. 31, 1963, and changes through 1972

Effective date	: Rate of duty :	Authority
	<u>Percent</u>	
	<u>ad val.</u>	
Aug. 31, 1963-----	15	: Adoption of TSUS.
Jan. 1, 1968-----	13	: GATT concession.
Jan. 1, 1969-----	12	: Do.
Jan. 1, 1970-----	10	: Do.
Jan. 1, 1971-----	9	: Do.
Jan. 1, 1972-----	7.5	: Do.

U.S. Imports of Golf Gloves

Total imports

Imports of golf gloves are not reported separately in official statistics, but are included with other golf equipment. A sample analysis of available entries in 1972 showed that imports of golf gloves were valued at an estimated \$5.7 million, amounting to a little more than one-half of the total in the classification in which they were included. However, they amounted to almost nine-tenths of the total imports in that classification from the seven countries that exported golf gloves to the United States (the United Kingdom, Spain, and Italy were the principal sources). Total imports of golf equipment from these countries, and presumably the imports of golf gloves as well, nearly tripled from 1969 to 1973, as shown in the table on the following page. During the same period, imports from the United Kingdom increased by 50 percent, those from Spain increased by 340 percent, those from Italy increased by 100 percent, and those from the other four countries, which had been negligible suppliers, also increased sharply. According to trade estimates, imports supply approximately 80 percent of U.S. consumption of golf gloves.

It is believed that most of the imported golf gloves are a full leather type, with elastic incorporated at various points, a V-shaped opening, and a Velcro fastening tab on the back. Whether or not made in accordance with the claims of the Antonious patent, most of these gloves resemble and are competitive with the leather golf glove made by Boyce-Lazarus Co. under the Antonious patent.

Golf equipment (except golf balls): U.S. imports for consumption in 1969-73, by principal sources of golf gloves in 1972

(In millions of dollars)

Country	1969	1970	1971	1972		1973
				All golf equipment (except golf balls)	Golf gloves ^{1/}	
United Kingdom-----	1.4	1.7	2.3	2.1	2.0	2.1
Spain-----	.5	.9	1.1	1.4	1.2	2.2
Italy-----	.8	.8	1.0	1.3	1.0	1.6
Portugal-----	.2	.2	.3	.7	.5	.7
France-----	<u>2/</u>	-	.1	.4	.4	.2
Philippine Republic-----	<u>2/</u>	.1	.2	.3	.3	.7
Republic of Korea-----	<u>2/</u>	.1	<u>2/</u>	.3	.3	.7
Total-----	2.9	3.8	5.1	6.5	5.7	8.2

^{1/} Estimated.

^{2/} Less than \$50,000.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

Imports and sales of allegedly infringing golf gloves ^{1/}

The following discussion is based on data reported by the Spalding Division of Questor Corp. and the Charles A. Eaton Co. Both of these companies have their gloves manufactured in Spain by a subsidiary of Questor. Evidence in the possession of the Commission indicates that these two firms together accounted for the bulk of imports of the golf gloves in issue during the period January 1, 1969-June 30, 1974. Spalding is a large U.S. manufacturer of sporting goods with foreign interests; Eaton is a U.S. producer of golf and tennis shoes.

^{1/} Data in this section are based on submissions to the U.S. Tariff Commission by two importers only. The Commission is aware of the fact that other importers are bringing in golf gloves which may infringe the Antonious patent; the magnitude of such imports could not be ascertained with any certainty.

Imports and sales of the golf gloves in issue began during 1969 ^{1/} and continued through June 30, 1974 (the latest period for which data were reported). In 1969 only Spalding imported and sold the golf gloves in issue; its imports were several times larger than the domestic production (by Boyce-Lazarus) of the patented gloves in that year. Spalding's imports rose somewhat in 1970 and in 1971 they rose by 60 percent, and Eaton commenced importing. In 1972 and 1973 combined imports by the two companies increased sharply, and during the first 6 months of 1974, imports were almost double the quantity imported during the corresponding period of 1973. Since 1971, combined annual imports by the two firms have been several times as large as domestic production and have trended upward, while domestic production has generally declined.

The trend in sales of the imported gloves in issue by the two firms combined generally paralleled the trend in their imports during 1969-73. However, during the first 6 months of 1974, sales of the imported gloves were lower than during the corresponding period of 1973. This decline was attributable to previous overbuying by the firms' customers, reduced sales to pro shops, and a drop in sales of top-of-the-line gloves caused by the general decline in economic conditions.

All of the models of golf gloves imported and sold by Eaton consisted of the gloves at issue in this investigation. Spalding also

^{1/} The Antonious patent was applied for on July 9, 1969. Production of golf gloves described in the patent by Boyce-Lazarus began in late 1969, and they were first offered for sale at the time production commenced. The patent issued on June 29, 1971.

imported other golf gloves; the share of Spalding's imports and sales they accounted for was lower in 1971 and 1972 than during the 2 previous years, but increased somewhat both in 1973 and the first 6 months of 1974.

Operations of Boyce-Lazarus Co., Inc.

Corporate background

Boyce-Lazarus Co., Inc., the only licensed producer under the Antonious patent, was founded in 1916 by the purchase of the facilities of a previously existing glove firm at the Johnstown, N.Y., location. The company officers are Joseph Lazarus, president; David Frisch, vice president; Milton Lazarus, treasurer; and Ethel Lazarus, secretary. The company, known as a producer of both textile and leather dress gloves, entered into the production of golf gloves when it acquired the Sanville Glove Co. in the early 1960's. The Johnstown plant produces only golf gloves, although the company imports all types of gloves and has knit gloves made on contract in Wisconsin. Some work, such as the cutting and sewing of golf gloves, is done on a contract basis in the Gloversville-Johnstown area of Fulton County (N.Y.) rather than in the plant.

At the time Boyce-Lazarus began to make the golf glove under the Antonious patent, toward the end of 1969, it owned an interest in Guantes de Ponce, a Puerto Rican glove manufacturing concern, where golf gloves (largely winter-type golf gloves of fabric and leather) were produced. As demand for the patented gloves increased, the licensee planned to

expand its production of such gloves to the plant in Puerto Rico, but only limited quantities of the patented glove were produced there.

Boyce-Lazarus sold its interest in the Guantes de Ponce plant in 1972.

In anticipation of increased sales of golf gloves as a result of its initial success in marketing the golf glove manufactured under the Antoniou patent, Boyce-Lazarus negotiated for the purchase of a modern glove factory in the Johnstown area in 1971; however, the sales of the subject gloves started to decline before the negotiations could be completed.

Boyce-Lazarus has developed several of its larger accounts for golf gloves, such as K-Mart stores, through its personal contacts in the industry. The bulk of the smaller accounts--principally golf pro-shops--are handled by Mr. E. J. Manley of Pittston, Pa.

Boyce-Lazarus sells the K-Mart stores a golf glove covered by the Antonious patent but of a slightly different design than its other gloves. K-Mart has become an important customer because the chain continues to open more new stores each year.

Production operations

Boyce-Lazarus' golf gloves are made from the imported skins of hair sheep. The company buys the skins in a pickled state and has the skins converted to leather in the United States. The process of manufacturing a golf glove is similar to the production of a dress glove, except golf gloves are made in single units rather than in pairs (with the exception of winter golf gloves).

The leather is first cut into pieces with shears for individual gloves in such a way that the maximum stretch in the leather will be across the width of the glove. The actual measurements of the glove are then laid out with a "french" rule, after which the outline of the glove is traced from a pattern in the correct hand size. The glove is then cut from the leather piece on a cutting machine with a hole left for the thumb--the outline of the front and back of the glove being in a single piece of leather with the front and back of the index finger in the center. The thumb and fourchettes (the side pieces of the fingers) are cut separately. Elastic material is stitched to the inside back of the glove. The glove parts are then sewn on a sewing machine, and the other parts such as the Velcro closure and labels are attached.

The operation of the Boyce-Lazarus plant can be considered efficient by the standards of the leather glove industry. Most leather golf gloves are produced in old multilevel plants similar to the Boyce-Lazarus plant in Johnstown.

Production and sales of golf gloves

As noted earlier, Boyce-Lazarus' production of golf gloves began in the early 1960's; its production of golf gloves under the Antonious patent began in late 1969. Boyce-Lazarus' production of golf gloves has accounted for only a small share of total U.S. output in recent years.

Production and sales of all golf gloves by Boyce-Lazarous increased from 1969 to 1971, declined in 1972, and recovered somewhat in 1973. The Antonious gloves accounted for most of the golf gloves sold by the firm

after their introduction late in 1969, but there was a partial return to other types in 1972 and 1973, when sales of the Antonious gloves dropped sharply.

Employment

Boyce-Lazarus' total employment throughout 1969-73 and January-June 1974 was less than 100 employees. While total employment on all products at the Johnstown, N.Y., plant remained relatively constant during the period, the number of production workers engaged in the production of the Antonious golf gloves peaked in 1971, as shown in the table below.

Boyce-Lazarus Co., Inc.: Index of production workers engaged in making the Antonious golf gloves, 1969-73

(1971=100)

Year	: Index of : production : workers
1969-----	26
1970-----	53
1971-----	100
1972-----	50
1973-----	73

Source: Compiled from data submitted to the Commission by Boyce-Lazarus Co., Inc.

Profit-and-loss experience

Boyce-Lazarus realized a profit on its overall operations in each year during 1968-73. In contrast, the only year in which it realized a profit on its operations devoted to the Antonious golf gloves was 1971 (the peak year of production and sales). In 1970 (the first full year of production and sales) the loss sustained was fairly significant in relation to net sales of such gloves; in 1972 the loss was smaller than

in 1970. In 1973 the loss was substantial in relation to net sales of such gloves and the net sales of all products by the firm, and was attributable not only to the reduced number of gloves sold, but also to a significant increase in the cost of raw materials--particularly of hair sheep skins. The cost of such skins rose by about one third from 1972 to 1973. In addition, the firm began to pay commissions to salesmen instead of deducting them from the royalties due to the inventor as it had formerly done.

Prices

This section is based on data submitted to the Commission by two importers of the golf gloves in issue--the Spalding Division of Questor Corp. and the Charles A. Eaton Co. The prices on domestically manufactured golf gloves made under the Antonious patent were supplied by the licensee, Boyce-Lazarus Co., Inc. Although the aforementioned importers brought in a number of different glove models during June 1969-June 1974, this discussion is based on their top-line models, which closely resemble the patented domestic gloves.

As the indexes in the following table show, the prices for domestically produced patented golf gloves remained constant during the period 1969-71, and then increased sharply during 1972-74.

Indexes of selling prices of top-line golf gloves produced by Boyce-Lazarus Co., Inc., under the Antonious patent and those imported by 2 importers, June of 1969-74

(1971=100)

Item	June--					
	1969	1970	1971	1972	1973	1974
Domestic golf gloves-----	100	100	100	144	144	154
Allegedly infringing imported golf gloves-----	80	80	100	96	101	122

Source: Compiled from data submitted to the Commission by Boyce-Lazarus Co., Inc.; Spalding Division of Questor Corp.; and Charles A. Eaton Co.

The prices for allegedly infringing imported golf gloves increased sharply in 1971, remained relatively stable in 1972 and 1973, and then increased sharply again in 1974. Prices of the imported gloves remained below those of Boyce-Lazarus' patented gloves throughout 1969-74.

U.S. Production and Consumption

Industry sources estimate that about 100,000 dozen golf gloves were produced in the United States in 1973 and that imports amounted to about 600,000 dozen in that same year. Since exports are negligible, apparent U.S. consumption in 1973 is estimated at 700,000 dozen or 8.4 million units. Data furnished the Commission establishes that in recent years U.S. consumption has increased significantly, while U.S. production has accounted for an ever-diminishing share of total U.S. consumption.

Combined domestic consumption of the patented Antonious golf gloves and of allegedly infringing imported golf gloves increased fivefold

during 1969-73. Although total consumption of the gloves in issue was increasing rapidly, Boyce-Lazarus' share of the U.S. market declined sharply in 1972 and again in 1973.

Efficient and Economic Operation of the Domestic Industry

Complainants have asserted that the domestic industry is efficiently and economically operated, and respondents have not disputed this. Complainants note that there is a considerable amount of hand labor involved in the production of the patented gloves, as is typical in the manufacture of fine leather gloves, but assert that the licensee manufacturing the gloves introduces up-to-date equipment and procedures when they are economically justified. (See exhibit 1, pp. 3 and 5, and transcript, p. 44.) Boyce-Lazarus, the sole domestic licensee under the Antonious patent, has operated its total glove manufacturing operations profitably for years. (See transcript, pp. 43-46.)

Contentions of Complainants and Respondents as to Injury to the Domestic Industry

Complainants have asserted that respondents' importation and sale of golf gloves which allegedly infringe the Antonious patent are seriously injuring the U.S. industry consisting of Antonious, Ajac, and Boyce-Lazarus Co. (See brief for complainants, received by the Commission on September 6, 1974, p. 6, and transcript, pp. 66-67.) Complainants assert that the domestic industry has been able at best to hold its own in terms of sales since a heavy influx of respondents' imports in 1972. (See transcript, pp. 29-34.) Further, complainants assert that

the allegedly infringing imports undersell the domestically produced glove by 20 to 40 percent. (See transcript, pp. 35 and 57.) Profit, especially potential profit, has also been lost by the domestic industry, it is contended, as a result of sales of allegedly infringing imports. (See transcript, pp. 46 and 52.) Complainant Antonious contends that his royalty income has dropped drastically as a result of the allegedly infringing imports (see transcript, p. 42), and complainant Ajac is said to be out of business as a result of an inability to compete with the allegedly infringing imported gloves (see transcript, p. 33).

Respondent Spalding argues that complainants have failed to establish that the domestic industry has suffered any injury by virtue of the sale of the allegedly infringing gloves. (See brief for Spalding, received by the Commission on September 6, 1974, p. 16.) As will be recalled, Spalding has argued that complainants Antonious and Ajac are not part of any domestic industry. Spalding further contends that any entrepreneurial interest of Antonious and Ajac in the glove-manufacturing operation of Boyce-Lazarus has not been shown to be injured. (See brief for Spalding, received by the Commission on September 6, 1974, p. 16.) Spalding also contends that complainants have failed to show any specific instance of lost sales to an allegedly infringing import. (See transcript, pp. 92-94, 215-217, and 333, and compare with p. 405.)

Respondent Spalding contends that complainants have failed to establish that any injury that the domestic industry may be suffering

is the result of infringing imports. The questioning of Commissioner Parker elicited the fact that the margin of underselling by the allegedly infringing imports exceeds the royalty which is paid to complainants in many cases. (See transcript, pp. 58 and 126-127.) Complainant's licensee has stated that its production costs have gone up sharply, although it asserts that this is true for everyone. (See transcript, pp. 68-69.) Complainants also have stated that there are domestic infringers of the Antonious patent, but that they are not aware of the volume of these infringing gloves and their impact on the domestic industry. (See transcript, pp. 329-332.) Further, Spalding has asserted in effect that even if Spalding's allegedly infringing imports were stopped, the domestic industry the subject of this investigation would not be materially helped, as Spalding's market share would be distributed in large part to golf glove producers other than such domestic industry. (See transcript, pp. 402-404.)

APPENDIX

U.S. PATENT NO. 3,588,917

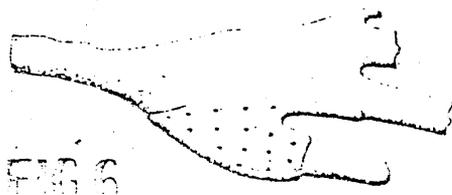
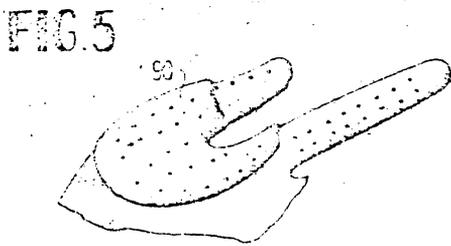
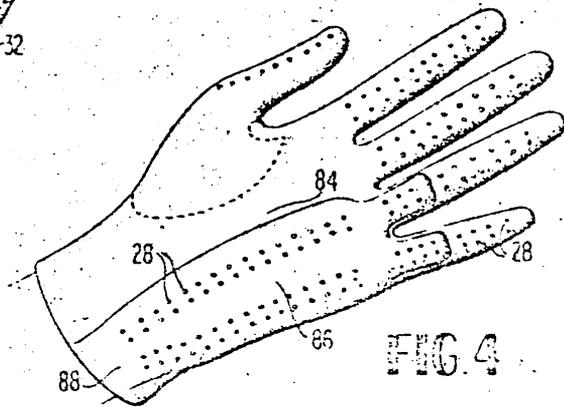
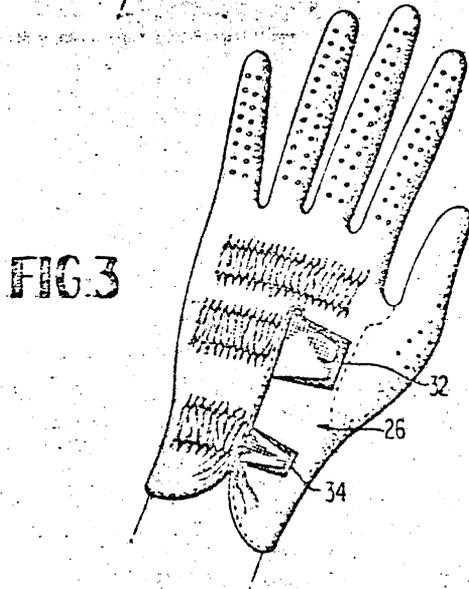
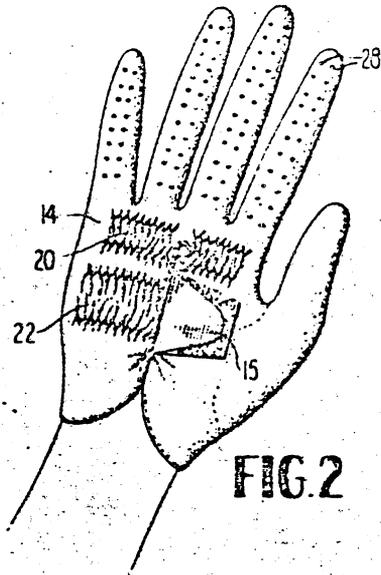
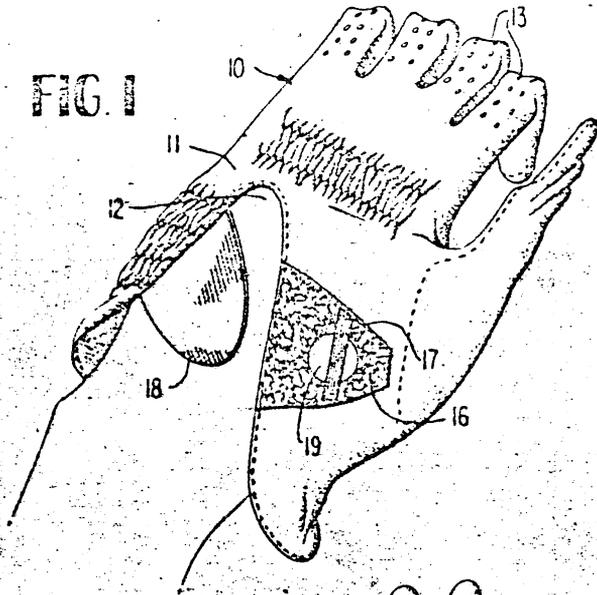
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A. J. ANTONIUS
GOLF GLOVE

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A. J. ANTONIOUS

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GOLF GLOVE

Filed July 9, 1969

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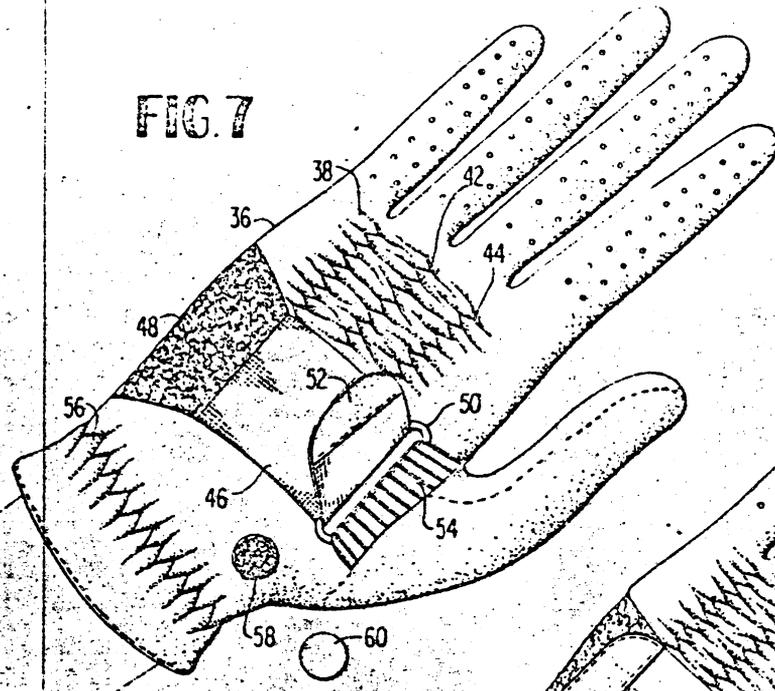


FIG. 7

FIG. 8

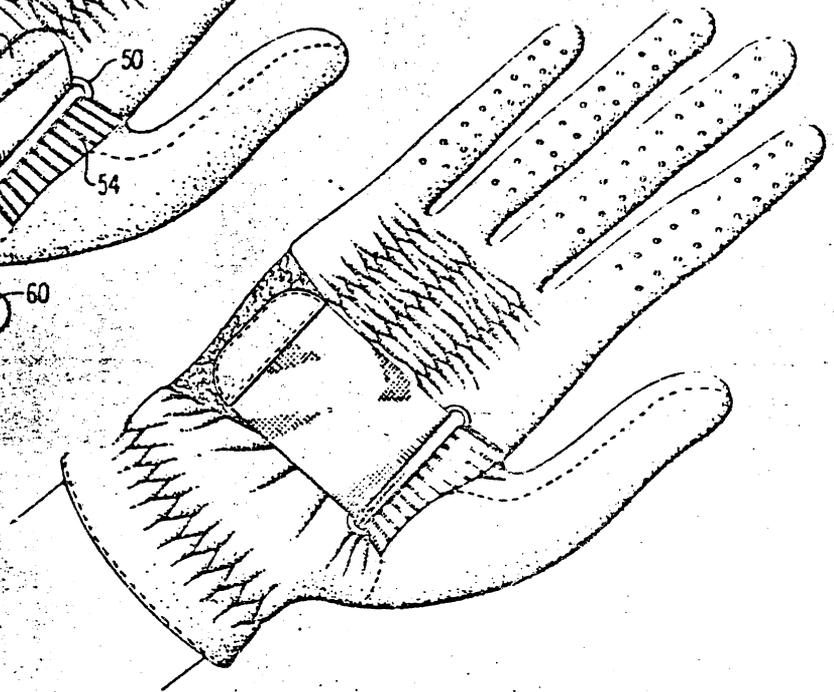


FIG. 9

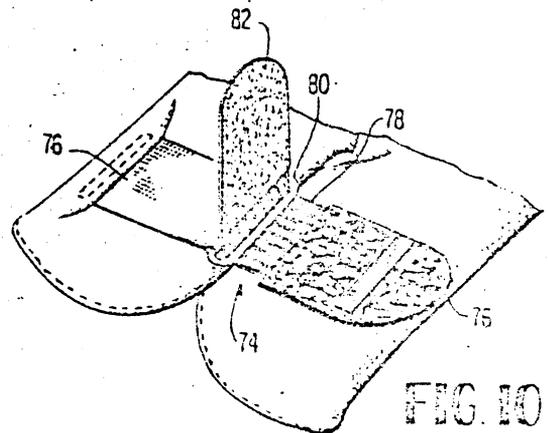
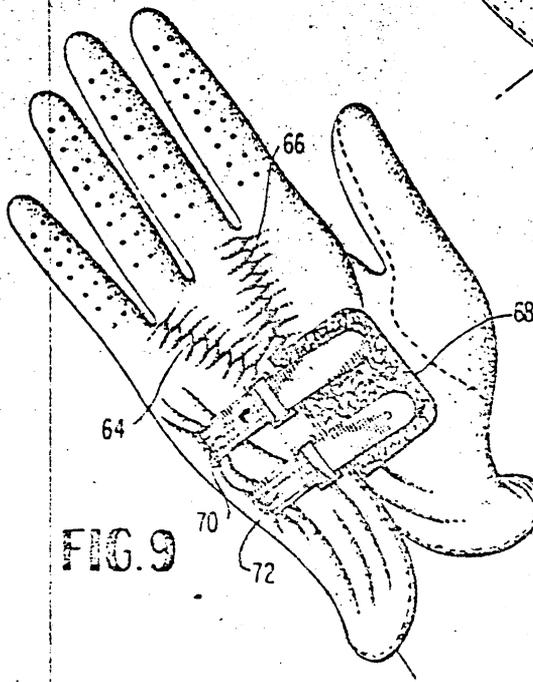


FIG. 10

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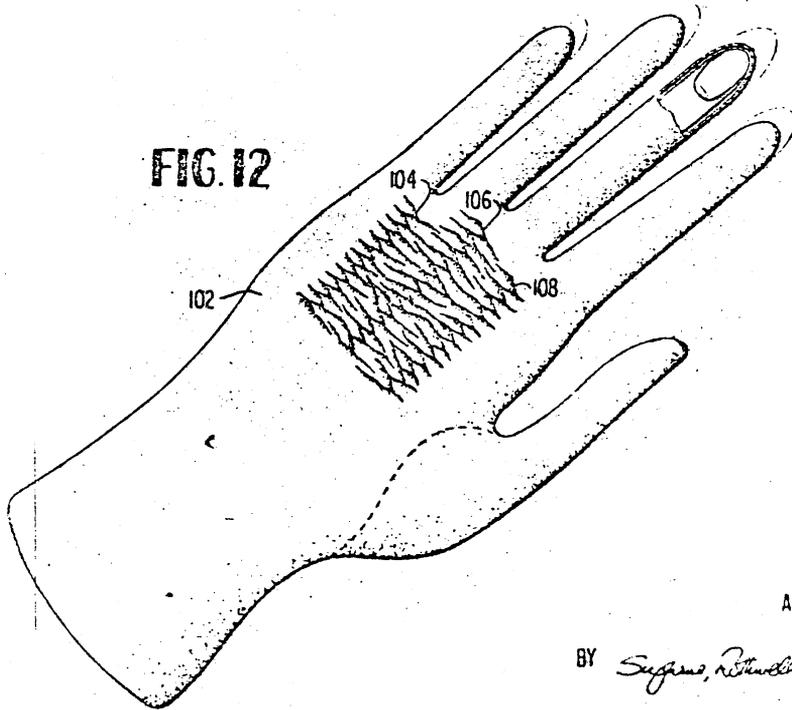
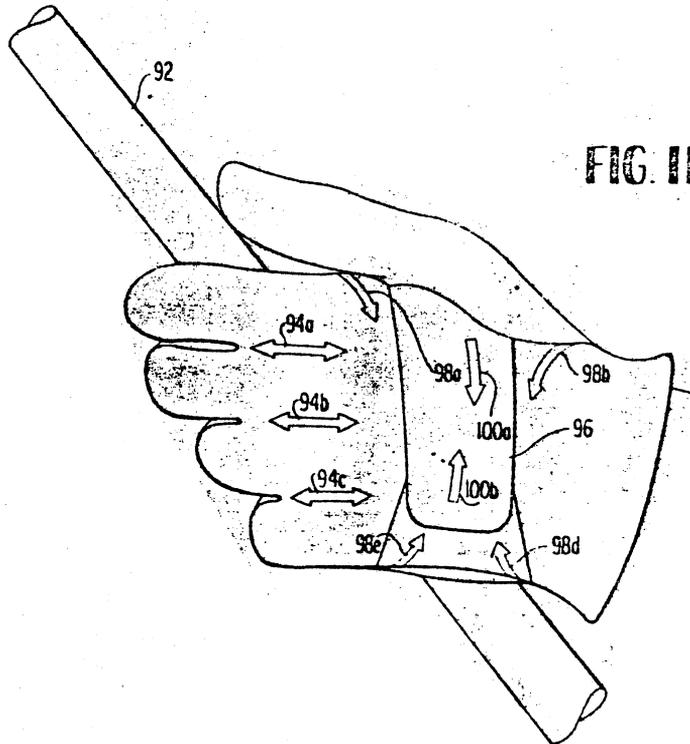
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A. J. ANTONIOUS
GOLF GLOVE

3,588,917

Filed July 9, 1969

3 Sheets-Sheet 3



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3,588,917
GOLF GLOVE
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 Filed July 9, 1969, Ser. No. 840,347
 Int. Cl. A41d 19/00

U.S. Cl. 2-161

12 Claims

ABSTRACT OF THE DISCLOSURE

A golf glove that provides a taut fit on the palm and fingers by providing elastic means across the knuckles of the glove that cooperate with a fastener. A deep vent opening can be provided on the back portion to permit easy entry of the hand. The glove can be adjustably fastened upon the hand by one or more Velcro nylon tabs which can be directly attached to one side of the deep vent opening or can be attached through a ring with a flexible strap to provide a double closure. The palm portion of the glove can be provided with a reinforced pad and vent perforations. An additional pad can be extended between the webbing of the thumb and index finger to ensure protection for other sports. A ball marker can be locked into the Velcro tab fastener or separately attached to the glove.

BACKGROUND OF THE INVENTION

Field of the invention

This invention relates generally to a glove utilized in sports events, and more particularly, to a glove which allows the wearer's hand to be easily inserted and removed while ensuring a taut, snug fit when the glove is in use.

Description of the prior art

While the glove of this invention has been found useful in numerous sports activities such as sports car racing, tennis, baseball, and many others, it will be described with respect to its use in game of golf. Golf gloves are commonly worn by golfers on the hand which grips the club uppermost on the shaft for the purpose of improving the grip on the club handle, avoiding calluses and blisters, and minimizing perspiration which causes slippage.

The prior art has been persistently plagued with the problem of maintaining a taut fitting glove. It has attempted to solve this problem in many different manners. Some gloves have utilized thick bands of elastic embedded in the front and back of the wrist portion of the glove, while other attempts have simply relied upon a Velcro tab to adjust the glove each time the wearer's hand is inserted into it. Numerous gadgets and gimmicks have been employed to negate the effect of the bunching or puckering glove on the wearer's golf game. For example, various grip locking assemblies, which utilized a direct adhesion of the glove to a complementary adhesive portion of the shaft handle have been attempted. Various locking straps, which circle both the hand and the shaft are also well known in the prior art along with numerous locking pads.

Despite these various attempts there still remains a need for a golf glove that can conform to the regulations established by the United States Golfers Association while providing a taut fit that will remain throughout the life of the glove.

SUMMARY OF THE INVENTION

The glove construction of the present invention recognizes these persistent problems in the prior art and offers both an economical and simple solution. The ma-

terial of the golf glove is by necessity thin and delicate to ensure the right feel and grip which is so important to the golfer, both physically and psychologically. The glove is not simply put on the golfer's hand and left there to the end of the game, but is frequently removed especially when the golfer reaches the green and utilizes his putter. During the hotter months of the summer, the golfer will frequently only put the glove on when he actually is about to strike the ball. The effect of perspiration and the environmental heat combined with the frequent insertion of the hand will result in stretching the thin glove material and, therefore, bunching or puckering its shape to such an extent that the glove will become useless before it actually physically wears out. This invention recognizes these problems and working within the necessary limitations of the golf glove material provides a simple golf glove construction which permits easy entry of the hand while still retaining the desirable taut fit throughout the life of the glove. This can be accomplished by the coaction of a deep vent opening on the back portion of the glove with the elastic material positioned around the glove to eliminate any puckering or bunching when the vent opening has been closed by appropriate fasteners.

The glove is designed to permit use of Velcro nylon fasteners which can, for example, be in the form of a tab on one side of the vent and a complementary portion on the exterior surface of the other side of the vent. This fastener can also be modified to utilize a pair of tabs with appropriate complementary portions.

An alternative and highly successful fastener involves the use of a flexible strap anchored to one side of the vent opening. This strap extends through a ring or the like anchored on the other side of the vent opening, and terminates in a Velcro tab. The complementary tab is fastened to the exterior back portion of the glove on the same side as the strap anchor. Pulling the free end of the strap through the ring and back to the complementary tab provides, in effect, a double thickness of the strap material to ensure a taut fit. A strap closure of this type is especially effective when the strap is constructed of elastic material, or when the ring is attached to elastic material and anchored on the glove.

The elastic material embedded in the back portion of the glove body, is preferably positioned longitudinal to the direction of the finger stalls and adjacent or over the knuckles. This placement of the embedded elastic has been found to minimize any bunching or puckering when the glove is securely fastened on the hand. Elastic elements attached along diagonal lines drawn respectively from the base of the knuckles of the small finger and index finger to the opposite sides of the wrist, have been found to almost approximate the fit achieved by longitudinal embedded elastic. The palm portion of the glove can be provided with reinforcement by providing an additional thickness of glove material or any reinforcing material, such as a polyethylene or sponge rubber pad. This reinforced section permits the glove to be perforated with vent holes over a substantial portion of the palm area which provides ventilation to minimize perspiration problems, thereby permitting a more positive grip. It has been discovered that a glove will generally be pulled over the hand by grasping the lower wrist portion below the heel of the palm with the other hand, and tugging it down until the material tautly covers the fingers. This method of installing the glove has been found to shorten the life of the average golf glove and has prohibited the installation of a satisfactory number of perforated vent holes. Thus, the reinforced section both protects the wearer's hand while increasing the gripping qualities and the life of the glove.

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An auxiliary pad can be installed across the front and back of the web portion of the glove extending between the glove and the index finger of the wearer's hand. This auxiliary pad would permit the glove to be utilized in sports requiring an overhand grip on the club, such as in baseball and tennis, and thus eliminate the calluses and blisters which are characteristic of these sports.

The Velcro nylon tab fastener can be provided with an elastic strap for holding a ball marker that is used to indicate the position of the golf ball on the green. An alternative method of providing a place for a ball marker on a golf glove is to utilize a ball marker with Velcro adhered to the underside and thereby capable of being attached to a Velcro base fastened onto the glove.

The advantageous taut fit, particularly in the manicured or contoured fit of the fingers, can be utilized in any glove that desire such a fit, either for fashion or utility.

The above aspects of the invention and other objects, features, and advantages will become more apparent from the consideration of the following detailed description when taken in conjunction with the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a pictorial representation of the golf glove of this invention, on the left hand of the right handed golfer as the hand is being inserted into the deep vent opening having Velcro tab fasteners on opposite sides thereof.

FIG. 2 is the same view as FIG. 1 with the vent opening closed by the Velcro tab fasteners to position the glove tautly on the hand.

FIG. 3 is a view of the back portion of an alternative glove utilizing two Velcro tab fasteners.

FIG. 4 is a view of the palm of the glove with vent perforations and a reinforcing pad.

FIG. 5 is a sectional view of the thumb and forefinger of the glove of this invention with an auxiliary pad positioned between the thumb and the forefinger.

FIG. 6 is a view as in FIG. 5, only showing the back portion of the auxiliary pad.

FIG. 7 is a pictorial representation of the back portion of a modified glove with the Velcro strap fastener being in an open position.

FIG. 8 is the same view as FIG. 7 with the fastener closed.

FIG. 9 is a view of the back portion of a glove with twin Velcro strap fasteners.

FIG. 10 is a fragmentary view of the back portion of a glove showing a Velcro tab fastener with an elastic strap.

FIG. 11 is a schematic illustration of a gloved hand showing the forces developed to keep the glove taut.

FIG. 12 is a view of a lady's glove with a section removed to show the taut fit about the finger.

FIG. 13 is a side view of a ball marker used with the modified glove of FIG. 7.

DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring to the drawings, and more particularly to FIG. 1, the glove 10, of this invention, is illustrated for the left hand of the right handed golfer. The glove includes a back portion 11 with finger sheaths or stalls 13 for the forefingers and the thumb. It is to be understood that the finger stalls of this invention need not be fully extended in the form illustrated. For example, it is not necessary that this glove includes a thumb stall or that the fingers be completely covered. The glove is preferably constructed of a light leather or other flexible fabric material. The back portion 11 has a deep vent opening 12 which extends from the wrist to approximately the base of the knuckles 14. This deep vent is designed specifically to permit easy entry and removal of the hand. The back portion 11 includes appropriately placed elastic strips 20

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and 22, which are structurally arranged to cooperate with the deep vent opening to provide a taut snug fit, as illustrated in FIG. 2. The elastic material as shown in this embodiment, is positioned adjacent the knuckles and on the back of the hand to ensure a taut fit across the palm. Note the force arrows on FIG. 11 to be described later. The positioning of this elastic material has been found to complement the natural movement of the hand and thus minimize the tendency to bunch or pucker. The deep vent opening 12 can be appropriately closed by a fastener 15, which, in the preferred embodiment, consists of Velcro fasteners which are easy to open and provide an adjustable fit to the individual hand. The Velcro fastener consists of an exterior surface 16 on the back portion 11 that is composed of Velcro nylon "loops" or pile material, and a tab portion 18 secured to the side of the deep vent opening and composed of Velcro nylon hooks.

Perforations or vent holes 28 are provided on the back of the fingers to both ventilate the hand and increase the inner locking grip of the golfer's other hand.

A strap 17, preferably of elastic, is fastened across the Velcro pile material to provide a holder for a ball marker 19.

FIG. 3 illustrates another embodiment of the glove constructed in accordance with the present invention wherein the fastener 26 consists of two separate Velcro tab closures 32 and 34. This model of the glove retains the taut fit of the first embodiment while permitting greater latitude in adjusting to the individual hand, and therefore helping to custom fit the glove to the particular wearer's hand.

The glove 36, illustrated in FIG. 7, discloses an alternative embodiment that utilizes longitudinally extending elastic means 38, 42, and 44. These elastic means extend in the direction of the fingers and generally cover the knuckles of the wearer's hand. The elastic means can extend beyond the knuckles down toward the wrist. The fastener includes a flexible strap 46 which is anchored adjacent the Velcro pile material 48. The strap passes through a ring 50 which is preferably metal or plastic and terminates in a tab portion 52 which is composed of Velcro nylon hooks. The tab portion 52 is generally designed to prohibit the easy passage of the tab portion 52 through the ring 50. The ring is anchored adjacent the base of the thumb by an elastic strap 54. A taut fit around the wrist is ensured by the elastic strap 56. The back of the glove contains a small portion of Velcro nylon pile material 58, which is capable of holding a ball marker 60, which has complementary Velcro nylon loops 62 adhered to its underside, as illustrated in FIG. 13. The ball marker is illustrated as being fastened to the back portion of the glove but it could be attached to the tab portion 52 or the strap 46.

FIG. 8 illustrates the same glove as described above with respect to FIG. 7 only shown in a taut closed position.

The glove, illustrated in FIG. 9, utilizes two strips of elastic material 64 and 66, preferably positioned across a pair of hypothetical diagonal lines that extend respectively from the base of the knuckle of the small finger across the back portion of the glove to the wrist, and from the knuckle of the index finger to the other side of the wrist. This positioning of elastic material, as with the other described forms, has been found to ensure a taut manicure or custom fit about the fingers. The fastener 68, illustrated in FIG. 9, is similar to the fastener used in the glove embodiment of FIG. 7. The two individual tap straps 70 and 72 help provide a customized fit.

The fastener, illustrated in FIG. 10, can, as with the other fasteners, be used with either a glove having a conventional closed back or a deep vent opening. The fastener 74 comprises a flexible strap 76 which is anchored on one side of the glove and an exterior surface 76 of Velcro nylon "loops" or pile material. An elastic strap 78 is anchored adjacent the exterior surface of the

Velcro pile material and extends through a loop 80, terminating in the free end with a Velcro tab portion 82 composed of Velcro nylon hooks. When the Velcro fasteners 76 and 82 are closed, the flexible elastic strap 78 is doubled in tension and thus ensures a taut positive fit.

FIG. 4 illustrates the palm portion 84 of the golf glove and includes a pad or reinforcing material 86 such as polyurethane which can be sewn onto the glove. The pad 86, although susceptible of other shapes, is preferably from the wrist 88 up to the base of the finger stalls. This reinforced area is capable of supporting numerous perforation or vent holes 28. These vent holes help to minimize perspiration and establish a positive fit. Previous golf gloves could only support a limited number of vent holes due to the delicate nature of the material from which the glove is made. With the use of the pad 86, the golf glove of this invention is capable of supporting the maximum number of vent holes that are desired in a golf glove. The reinforcing pad 86 serves another function: in increasing the life of the golf glove. The average golfer will generally pull the glove onto the hand by grasping with his free hand the lower palm portion of the glove and then jerking or tugging the glove into position. This reinforcing pad 86 thereby provides the additional strength necessary to prevent ripping or tearing of the glove, while in addition allowing the appropriate number of ventilation holes 28. The reinforcing material 86 can be an additional thickness of glove material or a separate supplemental pad.

FIG. 5 illustrates an auxiliary pad 90, which covers the web portion of the hand from approximately the knuckle of the forefinger to above the knuckle of the thumb and thus provides a glove, in accordance with this invention, which is useful in other sports such as tennis or baseball. FIG. 6 shows the back portion of the auxiliary pad 90. The use of this pad helps remove the characteristic calluses and blisters which are common in this type of sport.

FIG. 11 is a schematic of a gloved hand holding a club 92. The force arrows 94A, 94B, 94C represent the effect of the elastic across the knuckles of the wearer's hand. The fastener 96, in combination with the elastic on the back portion of the glove, creates the diagonal force members 98A, 98B, 98C, and 98D, plus the cross force members 100A and 100B. As can be seen from this schematic, the unique combination of the elastic means and the closing means provides a taut fit through the fingers and across the palm portion of the glove. The location of the fastener just below the knuckles ensures the positioning of the forces across the base of the palm and the base of the fingers, while the longitudinal elastic means across the knuckles ensures a proper fit in the fingers.

FIG. 12 illustrates a dress glove 102 which has three elastic means 104, 106, and 108 across the knuckles and back portion of the glove in the direction of the fingers to provide a taut manicured fit to the fingers, as compared to the normal position of the glove, as illustrated by the dotted lines in FIG. 12.

What is claimed is:

1. An athletic glove comprising a hollow flexible body member having front and back portions; stalls for at least four fingers of the wearer projecting from the body member; the back portion being provided with an opening extending from the end of the body member to approximately the stalls; first elastic means located in the back portion between the glove stalls and the opening, a flexible fastening tab extending from one edge of the opening; a complementary fastener located adjacent the opposite edge of the opening on the back portion, and second

elastic means in conjunction with the back portion adjacent the flexible fastening tab.

2. An athletic glove as in claim 1, where the opening is approximately triangular, having its base extending along the end of the glove body member.

3. An athletic glove as in claim 1, where the body member further includes a pad extending from the end of the body member along the front portion to approximately the stall area.

4. An athletic glove as in claim 1, where the complementary fastening portion includes a retainer means for holding a ball marker.

5. An athletic glove as in claim 1, where the first elastic means includes strips of elastic longitudinal to the body member.

6. An athletic glove as in claim 1, wherein the palm portion has a reinforcement and has a pattern of perforations.

7. An athletic glove as in claim 6, wherein the reinforcement is a pad which extends from the wrist up to the base of the finger stalls.

8. An athletic glove as in claim 1, where the second elastic means connects the flexible fastening tab to the back portion.

9. An athletic glove as in claim 1, where the second elastic means is attached to the back portion and the flexible fastening tab is attached directly to the back portion.

10. An athletic glove comprising a hollow flexible body member having front and back portions; stalls for at least four fingers of the wearer projecting from the body member; the back portion being provided with an opening extending from the finger stall area to approximately the end of the body member; a loop; a flexible strap; the loop attached to one side of the back portion and the flexible strap attached at one end to the other side of the back portion extending in an unrestrained manner through the loop, a first locking means attached to the free end of the flexible strap and a second locking means attached to the back portion adjacent the connection of the flexible strap with the back portion, whereby the first and second locking means interact to fasten the free end of the flexible strap to the back portion of the glove for securing the glove on the wearer.

11. An athletic glove as in claim 10, where the flexible strap includes an elastic portion.

12. An athletic glove as in claim 11, further including elastic means located between the glove stalls and the opening for providing a taut fit of the glove on the wearer's hand; and an elastic strap attaching the loop to one side of the back portion.

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